CLARENCE NORRIS, PETITIONER,

vs.

THE STATE OF ALABAMA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 534

CLARENCE NORRIS, PETITIONER,

vs.

THE STATE OF ALABAMA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA

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ORGANIZATION OF COURT

STATE OF ALABAMA,)
) CIRCUIT COURT.
MORGAN COUNTY.)

BE IT REMEMBERED, That at a regular term of the Circuit Court of Morgan County, Alabama, at which the officers authorized by law to hold or serve such court were serving, the following proceedings were had and done in a cause wherein State of Alabama was plaintiff and Clarence Norris was defendant. Present and presiding at the trial of said cause, was the Hon. W. W. Callahan, Judge of said Court.

ORDER FIXING DATE FOR SPECIAL SESSION GRAND JURY, SPRING, 1931.

STATE OF ALABAMA,)
)
JACKSON COUNTY.)

It appearing to the Court that the Grand Jury organized for this session of the Court was recessed or adjourned on the 13th day of March, 1931, subject to be re-called at any time by the Court; and, it further appears that since the said adjournment of the said Grand Jury a necessity has arisen for the reconvening of said Grand Jury.

It is, therefore, ordered that the said Grand Jury of Jackson County which is now at recess, and which was organized for this (Spring) session of this Court be reconvened at the Courthouse in Scottsboro on Monday the 30th day of March, 1931 to consider such matters as may be submitted to it by the Court, or that deserves their consideration.

The Clerk will issue an order to the Sheriff of this County to notify the members of said Grand Jury of this order and summons them to appear on said 30th day of March, 1931, at 10 o'clock A. M.

This the 26th day of March, 1931.

A. E. Hawkins,
Judge 9th Circuit.

I hereby certify that the above is a true and correct copy of the order of Court fixing the date for a Special Session of the Grand Jury in Jackson County, Alabama as filed in my office.

Witness my hand and seal of office this March 11, 1933.

C. A. Wann,
Clerk Circuit Court,
(SEAL) Jackson County, Ala.

Filed in office this Mar. 20, 1933.
J. H. Green, Clerk.

CLERK'S ORDER TO SHERIFF TO SUMMONS GRAND JURY, AT RECESS

STATE OF ALABAMA)
)
JACKSON COUNTY)

TO THE SHERIFF OF JACKSON COUNTY, ALABAMA, GREETINGS:

A order issued by Hon. A. E. Hawkins, Judge of the Ninth Judicial Circuit of Alabama to the Clerk of the Circuit Court of Jackson County, Alabama, that the Grand Jury of the Spring Term, 1931, that recessed on March 13th, 1931 subject to recall and it appearing to the court that since adjournment or recess a necessity

has arisen for the reconvening of said Grand Jury, and upon said order, you are hereby commanded to notify or summons said Grand Jury to appear at the Courthouse at Scottsboro, Alabama, on Monday the 30th day of March, 1931 at 10 o'clock A. M. to consider such matters as may be submitted to it by the Court, or anything that deserves their consideration.

The above order being made by Hon. A. E. Hawkins, Judge of the Ninth Judicial Circuit of Alabama, March 26th, 1931.

The following names are the Grand Jury for the Spring Term, 1931, recessed on March 13th, 1931 subject to recall.

Chas. Morgan,
Has. H. Rogers,
J. H. Cox,
G. W. Minton,
Geo. B. Phillips,
Wm. Rash,
J. P. Brown,
Arthur Gamble,
C. A. Mason,
Nash Manning,
J. M. Tedwell,
A. E. Chambless,
John G. Hicks,
Robert E. Hall,
Raymond Hodges,
C. D. Paul,
J. N. Ragsdale,
Walter Berry.

And have you then and there your returns how you have executed this writ.

Witness my hand, this 26th day of Mar. 1931.

C. A. Wann,
Clerk, Circuit Court.

I have executed the within by summoning all the within named Grand Jurymen. This March 10th, 1931.

M. L. Wann,
Sheriff.

I hereby certify that the above and foregoing page is a true and correct copy of the Clerk's order to the Sheriff of Jackson County to summon Grand Jury at Recess, the same being on file in my office.

Witness my hand and seal of office this March 11, 1933.

(SEAL)

C. A. Wann,
Clerk Circuit Court,
Jackson County, Ala.

Filed in office this Mar. 20, 1933.
J. H. Green, Clerk.

ORDER FIXING DATE FOR SPECIAL SESSION OF CIRCUIT COURT

STATE OF ALABAMA)
)
JACKSON COUNTY)

In the opinion of A. E. Hawkins, Judge of the Ninth Judicial Circuit, that it is proper and necessary that a Special Session of the Circuit Court of Jackson County, Alabama, should be held in said County, beginning on Monday, April 6, 1931, and to continue as long as necessary to dispose of cases set for trial at said Special Session.

It is, therefore, hereby ordered that a Special Session of the Circuit Court of Jackson County, Alabama, be held at the Courthouse at Scottsboro, beginning on Monday the 6th day of April 1931 and to continue as long as necessary to dispose of the cases that will be set for trial at said Special Session.

It is further ordered that seventy-five regular jurors be this day drawn for said Special Session of said Court and that the Sheriff of Jackson County, is hereby ordered

to summon all of said seventy-five regular jurors to appear at said Special Session of this Court on Monday the 6th day of April, 1931.

It is further ordered that all judgments by default or judgments in non-jury cases may be entered during said Special Session and that pleas of guilt may be taken in Criminal cases and Equity cases may also be submitted for orders and decrees at said Special Session.

This the 26th day of March, 1931.

A. E. Hawkins,
Judge of the Ninth Judicial Circuit.

I hereby certify that the above is a true and correct copy of order fixing date for Special Session of Circuit Court, Jackson County, Alabama, and the same being on file in my office.

Witness my hand and seal of office this March 11, 1933.

C. A. Wann,
(SEAL) Clerk Circuit Court, Jackson County, Ala.

Filed in office this Mar. 20, 1933.
J. H. Green, Clerk.

ORDER FOR REMOVAL

THE STATE OF ALABAMA	)	
	)	
VS.	)	CIRCUIT COURT OF
	)	JACKSON COUNTY,
HAYWOOD PATTERSON,	)	
EUGENE WILLIAMS,	)	ALABAMA.
OZIE POWELL,	)	
WILLIE ROBERSON,	)	CHARGED WITH
ANDY WRIGHT,	)	RAPE.
OLEN MONTGOMERY,	)	
CHARLIE WEEMS,	)	ORDER FOR
CLARENCE NORRIS,	)	REMOVAL.
ROY WRIGHT.	)	

On the hearing of the petition for a change of venue filed by all the defendants in the above styled cause,

came the State of Alabama, by its Attorney General, and the defendants by their Attorneys, and the Attorney General stating in open court that while he does not consent to a change of venue, that he does not resist the motion therefor. The petitioners having made known to the court by written petition and by statements of counsel in open court that they desire the trial of this case transferred to another County, it is, therefore, ordered that the prayer of said petition be and the same is hereby granted and the case is hereby removed to the Circuit Court of Morgan County, Alabama, for trial.

It is further ordered that the Clerk of the Circuit Court of this County, namely, Jackson County, Alabama, make out a transcript of all the entries, orders and proceedings in the case, including the organization of the grand jury, the indictment, the indorsements thereon, and all the entries relating thereto, the undertakings or recognizances of the defendant, all the orders and judgments thereon and a copy of this order, to which transcript he shall attach his certificate and his seal, and he shall forward said transcript in a package under seal by a special messenger, or by express, or by registered mail, or by delivering it in person, to the Circuit Clerk of Morgan County, Alabama, and he must also enclose in the package, the original subpoenas in the case.

A. E. Hawkins,
Judge of the Circuit Court of
Jackson County, Alabama.

Filed in office this Mar. 20, 1933.
J. H. Green, Clerk.

INDICTMENT

THE STATE OF ALABAMA,) CIRCUIT COURT
) Special March
JACKSON COUNTY.) Term, 1931

The Grand Jury of said County charge that before the finding of this indictment Haywood Patterson, Eugene

Williams, Charlie Weems, alias Charles Weems, Roy Wright, alias Ray Wright, Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery and Clarence Norris, alias Clarence Morris, whose names to the Grand Jury are otherwise unknown than as stated, forcibly ravished Victoria Price, a woman, against the peace and dignity of the State of Alabama.

No Prosecutor — H. G. Bailey,
Solicitor for Ninth Judicial Circuit.

A TRUE BILL J. N. Ragsdale, Foreman Grand Jury.

Filed in open court on the
31 day of March, 1931.
C. A. Wann, Clerk.

Witness Victoria Price
Ruby Bates
Dr. R. R. Bridges
Dr. Linch
Arvell Gilly
C. M. Latham
C. S. Broadway
C. F. Simmons
Tom Taylor Rousseau
Jim Broadway

I hereby certify that this is a true and correct copy of indictment number 2402 as it appears of record in my office in Indictment Record E at page 193.

Witness my hand and seal this the 9th day of March, 1933.

C. A. Wann,
Clerk.

(Circuit Court of Jackson County, Ala. SEAL)

Filed in office this Mar. 20, 1933.
J. H. Green, Clerk.

WRIT OF ARREST

STATE OF ALABAMA,)
) CIRCUIT COURT NO. ___
JACKSON COUNTY.)

TO ANY SHERIFF OF THE STATE OF ALABAMA, GREETINGS:

An Indictment having been found against Haywood Patterson, et als, at the Special Session, 1931, of the Circuit Court of Jackson County, for the offense of Rape.

You are therefore commanded forthwith to arrest the said Haywood Patterson et als, and to commit them to jail, unless they give bail to answer such indictment at the said Circuit Court of Jackson County, in the sum of _____ dollars.

Witness my hand, this 31 day of March, 1931.

C. A. Wann,
Clerk.

Executed by arresting the within named defendants and committing them to jail March 31, 1931.

M. L. Wann,
Sheriff.

I hereby certify that the above is a true and correct copy of the Writ of Arrest in the cases of the State vs. Haywood Patterson, et als cases numbering from 2402 to 2421 inclusive.

Witness my hand and seal of office this March 9th, 1933.

C. A. Wann,
Clerk Circuit Court, Jackson County, Ala.

(Circuit Court Jackson County, Ala. SEAL)

Filed in office this Mar. 20, 1933.
J. H. Green, Clerk

ORDER FOR SPECIAL SESSION

IN THE CIRCUIT COURT OF MORGAN COUNTY, ALABAMA.

It is ordered that a special session of the Circuit Court of Morgan County, Alabama, be and the same is hereby set to be held and convened on Monday, November 27, 1933, for the purpose of hearing and considering such matters and causes as may properly come before said court on said date. Said court to remain in session or to be passed or continued as may appear to the court proper and necessary for the disposition of such matters and causes as may come before the court at such time.

The Clerk will enter this order upon the permanent records of this court.

This, October 19, 1933.

W. W. Callahan;
Circuit Judge.

Filed in office Oct. 19, 1933.
J. H. Green, Clerk.

ORGANIZATION OF COURT

Nov. 20, 1933.

STATE OF ALABAMA,)
) CIRCUIT COURT
MORGAN COUNTY.)

MONDAY MORNING, November 20, 1933, the Court was duly opened according to law, present and presiding, the Hon. W. W. Callahan, one of the Judges of the Eighth Judicial Circuit of Alabama, Hon. Wade Wright, Solicitor of said Circuit, Hon. A. W. Davis, Sheriff of Morgan County, Alabama, and John H. Green, Clerk of said Court. The Court now being open according to law, the following proceedings were had and done, to-wit;

DRAWING OF JURORS—SPECIAL SESSION

For November 27th, 1933.

STATE OF ALABAMA,)
) CIRCUIT COURT.
MORGAN COUNTY.)

Now, on this the 20th day of November, 1933, the Hon. W. W. Callahan, one of the Judges of the Eighth Judicial Circuit of Alabama, in open court, at the Court House in Decatur, Morgan County, Alabama, drew from the jury box of Morgan County, Alabama, the names of 50 persons to serve as petit jurors for the week of this Court, beginning on the 27th day of November, 1933.

ARRAIGNMENT

STATE OF ALABAMA)
)
1977 VS.) NOVEMBER 20th, 1933
)
HAYWOOD PATTERSON,) Charge—Rape
OZIE POWELL, WILLIE ROBERSON, OLEN MONTGOMERY, CLARENCE NORRIS, ALIAS CLARENCE MORRIS, CHARLIE WEEMS & ANDY WRIGHT.) Transferred from Jackson County, Alabama, on Motion for Change of Venue.

Came the State by its Solicitor and the defendants in their own proper person and by attorney into open court, and this cause coming on to be heard, the defendants file motion to quash the indictment in this cause.

The said defendants being now personally present in open court, and by attorney, and being duly arraigned upon the indictment in this cause, plead not guilty thereto. Thereupon, the defendants each demand a severance. It

is therefore hereby ordered by the Court that a severance be and is hereby granted. Whereupon, the State by its Solicitor elects to try first the defendant Haywood Patterson.

STATE OF ALABAMA)
) NOVEMBER 24th, 1933
1977 VS.)
) Charge — Rape
CLARENCE NORRIS)
ALIAS)
CLARENCE MORRIS.)

Came the State by its Solicitor, and the defendant, Clarence Norris in his own proper person and by attorney into open court, and the said defendant, Clarence Norris in this cause, being arraigned upon the indictment in this cause, pleads not guilty. Cause set for trial on Thursday, November 30th, 1933. It appearing to the Court that heretofore the names of 50 persons, qualified citizens of the County, have been legally drawn to serve as regular jurors in this court for the week commencing November 27th, 1933, it is ordered that a list of 100 persons shall constitute the venire from which a jury shall be selected to try the defendant in this cause; and the Court now proceeds, in open court, to draw from the jury box of Morgan County, the names of 50 special jurors, which, together with the names of the 50 regular jurors, heretofore drawn as jurors for the week of this court commencing on November 27th, 1933, shall constitute the venire from which a jury shall be selected to try this defendant, in this cause. The Sheriff of this County is hereby ordered to summon all persons whose names have this day been drawn as special jurors and all persons who have been drawn as regular jurors for this court for the week commencing on November 27th, 1933, to be and appear in this Court on the 30th day of November, 1933, and the Sheriff is further ordered to serve forthwith upon the defendant a copy of the indictment in this cause and a list of all persons drawn as

jurors for the week of this court commencing on November 27th, 1933, and a list of the names of the persons this day drawn as special jurors in this cause.

MOTION FOR CHANGE OF VENUE

(This motion is set out in full at pp. 168-202 of Bill of Exceptions.)

Filed in open Court
Nov. 20th, 1933.
J. H. Green, Clerk

JUDGMENT ON MOTION FOR CHANGE OF VENUE

STATE OF ALABAMA)	
)	
1977 .. VS.)	
)	
HAYWOOD PATTERSON,)	
OZIE POWELL, WILLIE)	
ROBERSON, OLEN)	NOVEMBER 20th, 1933
MONTGOMERY, CLAR-)	Charge — Rape
ENCE NORRIS, ALIAS)	
CLARENCE MORRIS,)	
CHARLIE WEEMS &)	
ANDY WRIGHT.)	

Came the State by its Solicitor and the defendants in their own proper person and by attorney into open court, and the defendants file a motion or application for a change of venue in this cause; and the State by its Solicitor joins issue on the allegations contained in the said motion or application. Issue being now joined, and the said motion being now presented to and being duly considered and understood by the court, and after hearing the evidence introduced, both by the State and the de-

fendants, the Court is of the opinion that said motion is not well taken, and should be overruled. It is therefore considered, ordered and adjudged by the Court, on this November 21st, 1933, that said motion or application of the defendants for a change of venue in this cause, be and the same is hereby, overruled. To which action of the court the defendants then and there in open court duly reserved an exception.

MOTION TO QUASH VENIRE OF PETIT JURORS

(This motion is set out in full at pp. 419-429 of Bill of Exceptions.)

Filed in office this Nov. 20th, 1934.
J. H. Green, Clerk.

JUDGMENT ON MOTION TO QUASH VENIRE OF PETIT JURORS

STATE OF ALABAMA,	)	
	)	NOVEMBER 30th, 1933.
1977 VS.	)	
	)	RAPE
CLARENCE NORRIS,	)	
ALIAS	)	
CLARENCE MORRIS.	)	

Came the State by its Solicitor and the defendant in his own proper person and by attorney into open court, and the defendant, Clarence Norris, files a motion to quash the venire of petit jurors drawn to try this case, and the State of Alabama by its Solicitor joins issue on the allegations contained in said motion. Issue being now joined, and the said motion being now presented to, and being duly considered and understood by the court, it is the opinion of the Court that said motion should be overruled. It is therefore considered, ordered

and adjudged by the Court that the motion of the defendant, Clarence Norris, to quash the venire in this cause, be and the same is hereby overruled. To which action of the court, the defendant, Clarence Norris, duly reserved an exception.

MOTION TO QUASH INDICTMENT

(This motion is set out in full at pp. 43-51 of Bill of Exceptions.)

Filed in office this Nov. 20, 1933.
J. H. Green, Clerk.

JUDGMENT ON MOTION TO QUASH INDICTMENT

STATE OF ALABAMA	)	
	)	
1977 VS.	)	
	)	
HAYWOOD PATTERSON,	)	
OZIE POWELL, WILLIE	)	
ROBERSON OLEN	)	NOVEMBER 23rd, 1933.
MONTGOMERY, CLAR-	)	Charge—Rape
ENCE NORRIS, ALIAS	)	
CLARENCE MORRIS,	)	
CHARLIE WEEMS AND	)	
ANDY WRIGHT.	)	

Came the State by its Solicitor and the defendants in their own proper person and by attorney into open court, and the defendants having heretofore, on the 20th day of November, 1933, filed a motion to quash the indictment in this cause; and the said motion being now presented to and being duly considered and understood by the court, and after hearing the evidence introduced both for the State and the defendants, the court is of the opinion that

said motion to quash the indictment in this cause should be overruled. It is therefore considered, ordered and adjudged by the court, on this the 25th day of November, 1933, that the said motion to quash the indictment in this cause be, and the same is hereby overruled, to which action of the court, the defendants then and there in open court, reserved an exception.

ORGANIZATION OF COURT, NOVEMBER 27TH, 1933.

STATE OF ALABAMA,)
) CIRCUIT COURT.
MORGAN COUNTY.)

Monday morning, November 27th, 1933, present and presiding the Hon. W. W. Callahan, one of the Judges of the Eighth Judicial Circuit of Alabama, Hon. Wade Wright, Solicitor of the said Circuit, Hon. A. W. Davis, Sheriff of Morgan County, Alabama, and John H. Green, Clerk of said Court.

The Court being now open according to law, came the Sheriff and presented in open court the venire heretofore issued to him for jurors for this week of this court, which is in the following words and figures, to-wit:

STATE OF ALABAMA,)
) CIRCUIT COURT.
MORGAN COUNTY.)

TO THE SHERIFF OF SAID COUNTY—GREETING:

You are hereby commanded to summon the following named persons to appear and serve as jurors in this Court during the week beginning on Monday, the 27 day of November, 1933, at 8:30 o'clock, A. M., they having been drawn according to law to serve as jurors for this week of said Court, to-wit:

NAME	ADDRESS	OCCUPATION
1. Owen Atkinson	Valhermosa	Farmer
2. Will F. Bean	Decatur # 2	Farmer
3. Hickory O. Bridges	Danville	Farmer
4. William L. Carpenter	1422 5th Ave. South	Carpenter
5. Virgil O. Clark	Falkville	Banker
6. Elbert M. Cobb	Eva # 1	Farmer
7. J. Robert Daniel	521 Line St.	Insurance
8. George W. Dinsmore	Joppa # 1	Farmer
9. Walter Durham	522 Grant St.	Unemployed
10. James A. Forman	Somerville # 4	Farmer
11. Floyd N. Free	W. Moulton St.	L & N
12. Henry Goad	1302 4th Ave. E.	Capitalist
13. Floyd F. Griffis	1305 4th Ave. E.	Mechanic
14. Melvin A. Hardin	Falkville # 2	Farmer
15. Warren J. Hester	Joppa # 1	Farmer
16. Harry Higdon	412 Sherman St.	Mgr.
17. Melvin M. Hipps	Eva	Farmer
18. Phil Humphrey	232 Jackson St.	Salesman
19. Gladstone G. Isley	Hartselle # 2	Farmer
20. James H. Johnson	Walnut Street	Bookkeeper
21. Carl Jones	515 Grant St.	Foreman
22. George B. Kelley	Eva # 1	Farmer
23. Wm. C. Martin	Eva # 1	Farmer
24. T. G. (Bud) Masterson	511 3rd Ave. W.	Salesman
25. Raymond Minter	Falkville # 2	Farmer

NAME	ADDRESS
26. Earl McClung	Eva # 1
27. Leroy McEntire	717 Line St.
28. L. Hildred McDaniel	Joppa # 2
29. Edward H. Nelson	1112 5th Ave.
30. Albert M. Peck	Somerville #
31. Thomas H. Pirie	205 Prospect
32. Albert P. Postell	Hartselle
33. William R. Pruitt	617 7th Ave.
34. Avery Roberts	Decatur # 3
35. Claude J. Roberts	Somerville #
36. Sol Roberts	Decatur # 3
37. Fred S. Robinson	Decatur # 2
38. James E. Russell	Decatur # 3
39. Jno. H. Rusell	Decatur # 3
40. James M. Ryan	Decatur # 2
41. Otis J. Self	Eva # 1
42. Archie T. Shropshire	1411 5th Ave.
43. S. Edward Smith	Eva # 1
44. Robert G. Sybert	Hartselle # 2
45. Monroe R. Teague	Hartselle # 1
46. Wm. H. Thompson	Decatur # 3
47. Robert E. Wardlow	721 5th Ave.
48. Addie Wiley	Hartselle
49. Richard T. Williams	Hartselle
50. Himan Wohl	504 Bank St.

ADDRESS	OCCUPATION
Valhermosa	Farmer
Decatur # 2	Farmer
Danville	Farmer
1422 5th Ave. South	Carpenter
Talkville	Banker
Eva # 1	Farmer
821 Line St.	Insurance
Joppa # 1	Farmer
822 Grant St.	Unemployed
Somerville # 4	Farmer
W. Moulton St.	L & N
1302 4th Ave. E.	Capitalist
1305 4th Ave. E.	Mechanic
Talkville # 2	Farmer
Joppa # 1	Farmer
412 Sherman St.	Mgr.
Eva	Farmer
832 Jackson St.	Salesman
Hartselle # 2	Farmer
Walnut Street	Bookkeeper
815 Grant St.	Foreman
Eva # 1	Farmer
Eva # 1	Farmer
911 3rd Ave. W.	Salesman
Talkville # 2	Farmer

NAME	ADDRESS	OCCUPATION
26. Earl McClung	Eva # 1	Farmer
27. Leroy McEntire	717 Line St.	Teller
28. L. Hildred McDaniel	Joppa # 2	Farmer
29. Edward H. Nelson	1112 5th Ave. E.	Truck Driver
30. Albert M. Peck	Somerville # 2	Farmer
31. Thomas H. Pirie	205 Prospect Drive	Unemployed
32. Albert P. Postell	Hartselle	Farmer
33. William R. Pruitt	617 7th Ave. West	Clerk
34. Avery Roberts	Decatur # 3	Painter
35. Claude J. Roberts	Somerville # 3	Farmer
36. Sol Roberts	Decatur # 3	Farmer
37. Fred S. Robinson	Decatur # 2	Farmer
38. James E. Russell	Decatur # 3	Farmer
39. Jno. H. Rusell	Decatur # 3	Farmer
40. James M. Ryan	Decatur # 2	Farmer
41. Otis J. Self	Eva # 1	Farmer
42. Archie T. Shropshire	1411 5th Ave. So.	Merchant
43. S. Edward Smith	Eva # 1	Farmer
44. Robert G. Sybert	Hartselle # 2	Farmer
45. Monroe R. Teague	Hartselle # 1	Farmer
46. Wm. H. Thompson	Decatur # 3	Unemployed
47. Robert E. Wardlow	721 5th Ave. West	Unemployed
48. Addie Wiley	Hartselle	Farmer
49. Richard T. Williams	Hartselle	Taxi Driver
50. Himan Wohl	504 Bank St.	Merchant

And have you then and there this writ with your endorsement thereon.

Witness my hand this 20 day of Nov. 1933.

J. H. Green, Clerk.

In pursuance of the mandate of the above writ, I have executed the same by summoning as directed in the said writ each of the within named persons, except, Will F. Bean; Floyd N. Free, Melvin A. Hardin, Thomas H. Pirie, Robert E. Wardlow, Monroe R. Teague and Wm. H. Thompson, who were not found.

A. W. Davis, Sheriff.

The Court then caused the names of all jurors served to be called and examined under oath, and upon said call and examination, and for good and legal cause shown, the following named persons were excused by the Court from service as jurors for this week of this Court, to wit: James A. Forman, Harry Higdon, Carl Jones, Leroy McEntire, Sol Roberts and Fred S. Robinson.

Thereupon, the following named persons being ascertained to be competent and qualified persons to serve as petit jurors for this week of this court, were duly empaneled and sworn according to law, to wit: Owen Atkinson, Hickory O. Bridges, William L. Carpenter, Virgil O. Clark, Elbert M. Cobb, J. Robert Daniel George W. Dinsmore, Walter Durham, Henry Goad, Floyd F. Griffis, Warren J. Hester, Melvin M. Hipps, Phil Humphrey, Gladstone G. Isley, James H. Johnson, George B. Kelley, Wm. C. Martin, T. G. (Bud) Masterson, Raymond Minter, Earl McClung, L. Hildred McDaniel, Edward H. Nelson, Albert M. Peck, Albert P. Postell, William R. Pruitt, Averv Roberts, Claude J. Roberts, James E. Russell, Jno. H. Russell, James M. Ryan, Otis J. Self, Archie T. Shropshire, S. Edward Smith, Robert G. Sybert, Addie Wiley, Richard T. Williams and Himan Wohl.

Thereupon the following proceedings were had and done, to wit:

TALESMAN IN CLARENCE NORRIS CASE.

November 30th, 1933.

It being made to appear to the court that the venire for jurors ordered in this court to try the case of the State of Alabama vs. Clarence Norris has been exhausted, and there remains only 24 competent and qualified jurors, the court now in open court draws from the jury box of Morgan County, Alabama, the following named persons as jurors in this case, to-wit; Eddie Ashford, Elkin White, John W. Howell, Joe T. Ragsdale, Wolsey H. Fields, Wilbur F. Boswell, D. Webb Speake, John E. Wilks, Floyd E. Lawhorn, Baxter Hartung, Al L. Frazier and Russell Moseley. The Sheriff was ordered to summon the above named jurors to appear as jurors in said case on the 1st day of December, 1933, at 8:30 A. M.

Now, on this 1st day of December, 1933, the Sheriff made his report to the Court that he has summoned all of the above named persons except W. H. Fields and W. F. Boswell, who were not found. Thereupon the court caused all the names of said jurors called that were served, and they all answered said call, and the Court proceeded to qualify under oath the said jurors; and upon such qualification, all of the said jurors were challenged for cause, except Joe T. Ragsdale, who was found to be a competent juror in this case.

It now being made to appear to the Court that there are only 25 qualified and competent jurors from which a jury is to be selected to try this case, the Court now on this day, draws from the jury box of Morgan County the following named persons as jurors in this case, to-wit: Seneca A. Burr, Vernon Joiner, Louis Ling, Sam E. Dutton, James W. Godfrey, Paul B. Newsom, Will F. Sartor, William C. Watson, William Wise and Stanley Wyatt; the sheriff was ordered to summon said persons as jurors in this case instanter. The Sheriff reports to the Court that he had summoned all such persons, except Sam E. Dutton, William Wise and Stanley Wyatt, who

were not found. Thereupon, the Court caused all of said persons that were served to be called, and they all answered said call, and the Court proceeded to qualify said jurors under oath; and upon such qualification, all of said jurors were challenged for cause, except Seneca A. Burr and William C. Watson, who were found to be competent jurors in this case.

It now being made to appear to the Court that there are only 27 qualified and competent jurors from which a jury is to be selected to try this case, the Court on this day, draws from the jury box of Morgan County the following named persons as jurors in this cause, to-wit, Sim Price, Leo Humphrey, Ben M. Simpson, James B. McBride, John E. Moody and Ben B. Darnell; the sheriff was ordered to summon said persons as jurors in this case instanter. The Sheriff reports to the Court that he had summoned all such persons named. Thereupon, the court caused the names of such persons so summoned to be called, and all answered to such call, and the court proceeded to qualify said jurors under oath; and upon such qualification, all of said jurors were challenged for cause, except John E. Moody, who was found to be competent and qualified as a juror in this case.

It now being made to appear to the Court that there are only 28 qualified and competent jurors from which a jury is to be selected to try this case, the court on this day, drew from the jury box of Morgan County, the names of the following persons as jurors in this case, to-wit, John D. Ligon, Roy L. Nash, Fred Shores and Chas. M. Clardy; the sheriff was ordered to summon such persons as jurors instanter. The sheriff reports to the court that he had summoned all such persons above named except Roy L. Nash and Chas. M. Clardy, who were not found. Thereupon, the Court caused the names of such persons served as jurors to be called, and all answered such call, and the Court proceeded to qualify such jurors under oath; and upon such qualification, all of said jurors were excused and challenged for cause.

It now being made to appear to the Court that there are only 28 qualified and competent jurors from which

a jury is to be selected to try this case, the court now proceeds to draw from the jury box of Morgan County, the names of the following persons as jurors in this case, to-wit, John W. Sandlin, Walter H. Todd, Tom Rainey, Eason N. Shumake and Eugene W. Sivley; the Sheriff was ordered to summon such persons for jury service in this case instanter. The sheriff reports to the court that he had summoned all such persons above named except John W. Sandlin and Tom Rainey, who were not found. Thereupon, the Court caused the names of all such persons served to be called, and all answered to such call, and the court proceeded to qualify such persons under oath; and upon such qualification, all of such jurors were found to be qualified and competent jurors in this case, except Eason N. Shumake, who was challenged for cause, to-wit, Walter H. Todd and Eugene W. Sivley.

Thereupon, the number of qualified and competent jurors from which a jury is to be selected to try this case, being thirty, the Court ordered the selection of the jury to proceed.

COURT'S ORAL CHARGE.

(The oral charge is set out in full at pp. 625-638 of Bill of Exceptions.)

JUDGMENT AND SENTENCE

STATE OF ALABAMA	)	
	)	NOVEMBER 30th, 1933.
1977 VS.	)	
	)	Charge—Rape
CLARENCE NORRIS,	)	
ALIAS CLARENCE	)	
MORRIS.	)	

Came the State by its Solicitor, and the defendant, Clarence Norris, alias Clarence Morris, in his own proper

person and by attorney into open court, and the said defendant being arraigned upon the indictment in this cause, pleads not guilty thereto. Issue being now joined, came a jury of good and lawful men, to-wit, Walter H. Todd and eleven others, who having been duly empaneled and sworn according to law, and having heard the evidence introduced and the charge of the Court, upon their oaths say, on this the 6th day of December, 1933, "We the jury find the defendant guilty as charged in the indictment and fix the penalty at death. Walter H. Todd, Foreman." It is therefore considered, ordered and adjudged by the Court that the defendant, Clarence Norris, alias Clarence Morris, be and he is hereby adjudged guilty as charged, and that his punishment be fixed at death.

Now, on this the 6th day of December, 1933, the defendant, Clarence Norris, alias Clarence Morris, being personally present in open court, and by attorney, and the said defendant being asked by the court if he had anything to say why the sentence of the law should not now be pronounced upon him, says nothing. It is therefore considered, ordered and adjudged by the Court that the defendant, Clarence Norris, alias Clarence Morris, in accordance with the verdict of the jury, be and he is hereby sentenced to death by electrocution in Kilby Prison, at the City of Montgomery, Montgomery County, Alabama, and it is hereby ordered by the Court that Friday, the 2nd day of February, 1934, be and is hereby set and fixed for the execution of such sentence of death of the said defendant, Clarence Norris, alias Clarence Morris.

It is further considered, ordered and adjudged by the Court that, when a death warrant for his execution shall have been duly issued according to law, the Sheriff of Morgan County, Alabama, is hereby ordered to deliver the said Clarence Norris, alias Clarence Morris, as required by law to the Warden of Kilby Prison at Montgomery, Alabama, and that the said defendant be confined in said Kilby Prison until the 2nd day of February, 1934; and that on said day, at the time and place provided by law, the said Warden of Kilby Prison, or his

deputy thereunto legally appointed, shall cause to pass through the body of the said defendant Clarence Norris alias Clarence Morris a current of electricity of sufficient intensity to cause his death, and that such current of electricity be applied to his body and continued until the said Clarence Norris alias Clarence Morris is dead.

Before passing sentence the Court proceeded to ascertain by examination of said convict that he is of the colored race, male sex, age 21 years, unmarried, and his mother's name is Ida Norris, Molina, Ga.

The said defendant, Clarence Norris alias Clarence Morris, desiring an appeal, and now on this the 6th day of December, 1933, in open court, gave notice of an appeal to the Supreme Court of Alabama, and requesting a suspension of the execution of this judgment and sentence of this Court pending his said appeal: It is therefore hereby ordered by the Court that the judgment and sentence of this Court be and the same is hereby suspended pending the said appeal, and it is further ordered that said defendant, Clarence Norris alias Clarence Morris, be held in custody.

MOTION FOR NEW TRIAL.

(This motion is set out in full at pp. 26-42 of Bill of Exceptions.)

Filed in office this
Jan. 3, 1934.
J. H. Green,
Clerk.

MOTION TO STRIKE MOTION FOR NEW TRIAL

STATE OF ALABAMA, PLAINTIFF,	)
VS.	) IN THE CIRCUIT COURT) OF MORGAN COUNTY,) ALABAMA.
CLARENCE NORRIS, DEFENDANT.	)

Comes the State of Alabama, plaintiff in the above styled cause, and moves this Honorable Court to strike the defendant's motions for a new trial or that which purports to be motions for a new trial and all amendments thereto and for grounds of said motion to strike says as follows:

That this Court no longer has jurisdiction, power or authority over the judgment rendered in this cause on the 6 day of December, 1933. The defendant was tried, convicted and sentenced during the 1933 fall term of the Circuit Court of Morgan County, Alabama which term of Court ended by operation of law on the 23d day of December, 1933. That the defendant did not file any motion for a new trial or in arrest of judgment until after the expiration of said term of court, to-wit on the 3rd day of January, 1934, at which time this Court had lost jurisdiction over said judgment.

Respectfully submitted,

Thomas E. Knight Jr.
Attorney General

Thos. Seay Lawson,
Assistant Attorney General.

Filed in open court this 24th day
of February, 1934.
J. H. Green, Clerk.

JUDGMENT ON MOTION

STATE OF ALABAMA	)	
	)	
1977 VS.	)	JANUARY 3, 1934.
	)	
CLARENCE NORRIS.	)	

In this cause, the defendant having filed a motion to set aside the verdict and judgment in this cause, and to grant unto him a new trial, and upon request of the said defendant for continuance, it is considered, ordered and adjudged by the court that said motion is without waiver prejudice to the parties hereto continued to January 26th, 1934 at 10 o'clock A. M.

Now, on this the 26th day of January, 1934, upon request of the defendant, it is considered, ordered and adjudged by the court that the motion for a new trial in this cause be and is, without waiver or prejudice to the parties hereto, continued to February 24th, 1934 at 10 o'clock A.M.

Now, on this the 24th day of February, 1934, this cause coming on to be further heard before the court upon the motion of the defendant to set aside the verdict and judgment in said cause, and to grant unto the said defendant a new trial, came the State by its Solicitor and the defendant by attorney into open court, and the State by its Solicitor files in open court a motion to strike the defendant's motion for a new trial in this cause from the docket; and the said motion to strike being now presented to and being duly considered and understood by the court, it is thereupon considered, ordered and adjudged by the court that the said motion to strike be and is hereby sustained, and the defendant's said motion for a new trial in this cause be and is hereby stricken. To which action of the court the defendant then and there duly reserved an exception.

APPLICATION FOR REHEARING OF MOTIONS FOR NEW TRIAL

IN THE CIRCUIT COURT OF MORGAN COUNTY ALABAMA.

STATE OF ALABAMA)
)
against)
)
HAYWOOD PATTERSON, DEFENDANT.)

STATE OF ALABAMA)
)
against)
)
CLARENCE NORRIS, DEFENDANT.)

APPLICATION FOR REHEARING OF MOTIONS FOR NEW TRIALS.

Come the defendants, Haywood Patterson and Clarence Norris, named in the above styled cause, by their attorneys, Samuel S. Leibowitz, George W. Chamlee, Joseph R. Brodsky, Osmond K. Fraenkel, and Elias M. Schwarzbart, and move the court to grant and allow reargument of the motions for new trials, heretofore made, and stricken by the court on February 24, 1934; and for cause of said application assign the following reasons and causes, separately and severally:

I. Your petitioners, Haywood Patterson and Clarence Norris, after trials had before Honorable W. W. Callahan, Judge of the Circuit Court, Morgan County, at Decatur, were found guilty as charged in the indictment, on December 1, 1933, and December 6, 1933, respectively, and their punishment fixed at death. On December 6, 1933, the court made and entered judgment of conviction of your petitioners and sentenced your petitioners to die. Thereupon the attorneys for petitioners made and filed

notices of appeal and the execution of the sentences on your petitioners were stayed pending the outcome of the appeal.

II. On December 1, 1933, after the jury in the case of Haywood Patterson brought in a verdict of guilty, Samuel S. Leibowitz, chief defense counsel, requested of the court an extension beyond thirty days within which to file a motion for a new trial, giving as reasons therefor that the transcript of the proceedings and trial would not be transcribed and available to defense counsel for at least one month; that said transcript was essential for the preparation of a proper motion for a new trial and that additional time would be required after receipt of the transcript to prepare and file the said motion.

The foregoing incident and the incidents herein below referred to are more particularly set forth in the affidavit of Joseph R. Brodsky, hereto annexed and made part hereof as if fully set forth herein.

III. The court denied the said application for extension beyond thirty days, and stated to defense counsel, in effect: You have thirty days within which to make a motion for a new trial, and after you have made such motion within the thirty-day period, you may then apply to the court for additional thirty-day extensions in order to file the amended motion for a new trial based upon the transcript.

IV. The above colloquy between the court and defense counsel set forth in paragraphs II and III, occurred in open court in the presence of Thomas E. Knight, Jr., Attorney General of the State of Alabama, chief of counsel for the State, and other counsel for the State, and was not objected to or commented upon by them.

V. The colloquy set forth above in paragraphs II and III was not recorded by the official stenographer, E. P. Kingsbery, and is not in the official transcript of the trial.

VI. However, the occurrence of the above colloquy is confirmed by the affidavit of Joseph R. Brodsky, above referred to, and by newspaper articles of the proceedings at the trial, which are more fully set forth in said affidavit of Joseph R. Brodsky.

VII. Subsequently, on December 6, 1933, at the time of the sentence of Haywood Patterson, and of Clarence Norris, who had been found guilty on that day, Samuel S. Leibowitz, defense counsel, stated to the court that he assumed that the same rule that the court made in the Patterson case with reference to the procedure on the motion for a new trial, also applied in the case of Norris. The court replied that that was so, or words of similar effect.

VIII. Subsequently, on December 29, 1933, defense counsel made and filed a motion for a new trial in the case of Haywood Patterson, and on January 2, 1934, made and filed a motion for a new trial in the case of Clarence Norris. At the time of filing each of said motions, the court was notified of the filing thereof, and continuances requested. The court acceded to the requests of defense counsel and continued the motions from time to time, finally fixing the date for argument on said motion at February 24, 1934.

Exact copies of the telegraphic and other correspondence between the court and defense counsel with reference to the above are annexed hereto and made part hereof, as if fully set forth herein.

IX. Copies of the aforesaid motions for new trials in the cases of Patterson and Norris were served by mail on Thomas E. Knight, Jr., on December 29, 1933, and January 2, 1934, respectively, and were received and retained by him without any objection being made to the said motions upon any ground whatsoever, either to the court or defense counsel, until February 24, 1934, the day of the argument of the said motion.

X. On February 24, 1934, the date set by the court for argument, the State appeared by Attorney General Knight, and defendants by Osmond K. Fraenkel and George W. Chamlee. The State moved to strike defendants' motions on the ground that said motions allegedly were not made, as required by the law, within the term of the court, which expired on December 23, 1933. The court granted the State's motion, and struck defendants' motion, without hearing or determining said motions on the merits thereof.

XI. None of counsel for defendants are attorneys of the State of Alabama, but all reside and practice law in other states of the Union. For the trial of the cases of the petitioners herein, and their co-defendants, defense counsel endeavored to familiarize themselves and did become informed of the general rules of practice of the courts of the State of Alabama. Defense counsel were informed that the statutes of this state required that the motions for new trials must be filed within thirty days. However, defense counsel were not acquainted with the limiting provision that the same must nevertheless be made within the term of the court. Moreover, defense counsel were not familiar with the terms of the Circuit Courts or the time of expiration of such terms.

XII. Defense counsel implicitly relied upon the assurance of the court, as set forth in paragraphs III and VII hereof, that defendants had thirty days within which to file the motions for new trials, and accordingly filed said motions within that time.

XIII. By reason of the reliance by defense counsel on the assurance of the court, as stated, the said motions were filed within thirty days but after the expiration of the term of the court, and notwithstanding such reliance upon the assurance of the court, the said motions were stricken by the court as not being filed within the time required by law.

XIV. The striking of the said motions by the court was to the serious prejudice and detriment of your petitioners, as by reason thereof petitioners are limited to an extent in the questions that may be raised for review by the Supreme Court on appeal.

XV. Your petitioners respectfully submit that the court erred in striking the motions of defendants on the ground that the same were not filed within the required time, and that the requirements of the law with reference to the time of making the motions for new trials were substantially complied with by the defendants, for the following reasons:

(1) The court assured defense counsel that they had thirty days within which to file the motions for a new trial, as set forth above.

(2) Such assurance was made in open court in the presence of counsel for the State, and was not objected to by them at that time or any other time.

(3) The court has the power, within the term of the court, to grant a continuance or extension beyond the term of the court of the time for making motions for new trials.

(4) The assurance given by the court, as above stated, was made within the term of the court, in the presence of counsel for both sides, and operated as an extension beyond the term of the court within which to file motions for new trials.

XVI. Your petitioners respectfully submit that the court should grant a rehearing of the said motions, so that they may be argued upon their merits, for the following reasons:

(1) The State, on February 24, 1934, the day of the argument of said motion, for the first time made known

that it would move to strike said motions, although counsel for the State had ample opportunity to advise defense counsel of their intention so to do.

(2) Osmond K. Fraenkel and George W. Chamlee, defense counsel who appeared for the argument, were taken completely by surprise and were unprepared at that time to meet the contention of the State that the said motions were not made within the required period.

WHEREFORE, Your petitioners pray that the court grant the application for rehearing so that the motions for new trials may be argued and decided upon their merits; for which no previous application has been made.

Dated, March 5, 1934.

Respectfully submitted,

SAMUEL S. LEIBOWITZ
JOSEPH R. BRODSKY
GEORGE W. CHAMLEE
OSMOND K. FRAENKEL
ELIAS M. SCHWARZBART
Attorneys for Petitioners.

IN THE CIRCUIT COURT OF MORGAN COUNTY ALABAMA.

STATE OF ALABAMA

against

HAYWOOD PATTERSON, DEFENDANT.

STATE OF ALABAMA

against

CLARENCE NORRIS, DEFENDANT.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

JOSEPH R. BRODSKY, being duly sworn, deposes and says:

I am one of the attorneys for the defendants in the above entitled actions, and make this affidavit in support of motion for a rehearing of the motions for new trials, heretofore stricken by the court on the ground that said motions were not filed within the statutory time.

I attended as one of defense counsel the trial of both defendants held before Honorable W. W. Callahan in the Circuit Court of Morgan County in the City of Decatur in November and December, 1933.

On December 1, 1933, the jury in the Patterson case returned a verdict of guilty and fixed the punishment at death. I was present in court at that time and at all the times hereinafter referred to, and witnessed all the incidents hereinafter referred to, except as hereinafter stated.

Upon the return of the verdict, Mr. Samuel S. Leibowitz, chief defense counsel, requested that the defendant Haywood Patterson be immediately sentenced. However, the court refused to do this, stating that it did not like to sentence a defendant on the same day the verdict is brought in, and that he would sentence Patterson later; or words to that effect.

Immediately following this colloquy, Mr. Leibowitz requested of the court an extension beyond thirty days within which to file a motion for a new trial for the reason that the transcript of the testimony was necessary in order to prepare a proper motion for a new trial, and that he had been advised by Mr. E. P. Kingsbery, the official stenographer, that the transcript would not be ready in less than a month. Judge Callahan denied Mr. Leibowitz's application, stating in effect: You have thirty days within which to make a motion for a new trial, and after you have made such motion within the thirty day period, you may then apply to me for a continuance for additional thirty day periods in order to file your amended motion based upon the transcript.

All the above stated colloquy occurred in open court, in the presence and hearing of Mr. Thomas E. Knight, Jr., Attorney General of the State of Alabama, and

other counsel for the state, and the assertion of the court that defense counsel had thirty days within which to file a motion was not objected to or commented upon by any of them.

Most unfortunately, the official transcript has omitted from it the said incident and colloquy above referred to. However, your deponent very distinctly recalls the same and avers that he accurately reports it as it occurred.

That this incident and colloquy did occur, is fully confirmed by newspaper accounts of the proceedings made by journalist who were present in court on that day and throughout the trials.

The New York Times of December 2, 1933, carries an account by F. Raymond Daniell, its special correspondent for the trials, under date line of Decatur, December 1st, following a portion of the account reporting the request, above referred to, of counsel for the defense to have Haywood Patterson sentenced immediately:

"'I make it a rule,' says Judge Callahan, 'never to sentence a man if I can help it on the day the jury brings in a verdict. I don't believe in yanking him around. I will fix a day for sentence, however, before you leave, Mr. Leibowitz.'

"The court then informed Mr. Leibowitz that he had thirty days in which to file a motion for a new trial. A request that the defense be given thirty days from the date when the transcript of the testimony taken at the trial is delivered, was denied."

Similar reports were contained in the New York Herald Tribune of December 2, 1933, containing the account of its special correspondent, Mr. Raymond, who attended the trials; also, the December 2, 1933, issue of the New York Daily Mirror, which carried the United Press reports.

Subsequent to the above incident, both while defense counsel were still in Decatur and later in New York City, the above incident was referred to and mentioned among counsel, all of whom were present in court at the time the incident occurred.

Subsequently, on December 6, 1933, the court sentenced both Patterson and Norris, the latter of whom had been found guilty on that day. Directly after sentence was pronounced, Mr. Leibowitz stated to the court that he assumed that the same rule that the court made in the Patterson case with reference to the motion for a new trial also applied in the Norris case. To this, Judge Callahan said, that is right, or words of similar effect.

Your deponent was not in court at the time of sentence of the defendants on December 6, 1933, when the above occurred, but Mr. Leibowitz at that time, on the same day, and again more recently, when the question arose, told me that the above, as stated by me, occurred.

Mr. Leibowitz's affidavit to this effect is not included in this motion solely because, when I telephoned him today to have him prepare such an affidavit for the motion to reargue, I learned that he was actually engaged in the trial of a case and could not prepare the same in time to be taken down this afternoon by Mr. Elias M. Schwarzbart, my assistant, who was leaving on the afternoon train for Decatur with all the papers.

Mr. Samuel S. Leibowitz and your deponent, two of counsel for the defendants, regularly practice law in the State of New York, where they reside; and George W. Chamlee, also of counsel, regularly practices law in the State of Tennessee, where he resides; and counsel have made themselves generally familiar with the practice in the State of Alabama, but are not conversant with all the details and technicalities of that practice. Your deponent and other counsel for the defense were familiar with the Alabama law providing for thirty days after judgment within which to file a motion for a new trial, but they were not acquainted with the limiting rule that the said motion must be made within the term of the court; nor were they familiar with the terms or the expiring days of the terms of the court.

Moreover, counsel for defendants relied implicitly upon the assurance of the court that defense counsel

had thirty days within which to file motions for new trials, as above stated.

Your deponent and other counsel for the defendants are deeply convinced that the statement of the court assuring defense counsel that they had thirty days within which to file motions for new trials, was made solely for the purpose of aiding and guiding defense counsel, who the court anticipated might be strangers to the peculiarities of Alabama practice. The court made this statement directly after denying Mr. Leibowitz's request for more than thirty days' time to file the motion for a new trial, explaining to defense counsel that the motion must be filed within thirty days and then the court might grant additional thirty day adjournments in order to give defense counsel an opportunity to file amended motion based on the transcript.

Ironically, however, the earnest and well-intentioned assurance of the court was completely relied upon by defense counsel, to their detriment, and in the first place, to the detriment of the defendants. Ironically, because defense counsel did rely upon it, the said motions for a new trial were filed within the thirty-day period but after the term of the court, the court then striking these motions on the ground that they were not filed within the statutory period.

The term of court expired on December 23, 1933, as deponent is now advised. The motion for a new trial in the Patterson case was filed on December 29, 1933, and in the Norris case was filed on January 2, 1934, both within the thirty-day period.

Simultaneously with the filing of said motion, defense counsel telegraphed to Judge Callahan, advising him of the filing, and requesting additional time for the purpose of filing amended motion. Judge Callahan wired back in each instance granting additional time. Copies of the telegraphic correspondence are attached to and made part of this motion. Subsequently, the argument of the motions for new trials was set for February 24, 1934.

Simultaneously with the filing of the said motions as above stated, copies of the motion papers were mailed

to Attorney General Knight, and were received by him without objection.

For the argument of the motions for new trials on February 24, 1934, Attorney General Knight appeared for the State, and Mr. Osmond K. Fraenkel, Mr. George W. Chamlee appeared for the defendants. At the opening of the argument, Attorney General Knight made a motion to strike these motions on the ground that they were not filed within the term of court. The court granted this motion. This was the first warning the defense had had that the State would move to strike our motions, not on the merits, but on that technicality. Copies of the motions had been served on Attorney General Knight more than a month and a half prior to that time, and Mr. Knight at no time indicated to defense counsel or filed in court any objection to said motion on any ground whatsoever, although he had ample time to do so. As a result, the defendant's attorneys were taken completely by surprise and were not in a position to answer or overcome the arguments made in favor of the motion to strike said motions. If defense counsel had been advised by Attorney General Knight in advance of the date set for argument,—it could have been done very easily and as a matter of simple courtesy—counsel for the defendants would have been in a position on that day to meet the arguments of the State and would have made it unnecessary to apply, as we are now doing, for a rehearing.

Immediately after the court's decision striking said motions, Mr. Fraenkel telephoned deponent from Decatur and advixed him of the developments. Deponent then and there called Mr. Fraenkel's attention to the fact that Judge Callahan had given us thirty days within which to make our motions for new trials, and read to him newspaper articles substantiating the same (as set forth above), and requested Mr. Fraenkel to communicate with Judge Callahan and make known to him these facts.

Mr. Fraenkel then communicated with Judge Callahan. Judge Callahan, according to Mr. Fraenkel, stated that

he did recall some conversation had with Mr. Leibowitz concerning the time within which to make motions for new trials but that he did not allow thirty days within which to do so; that even if he had so stated, he was without power to do so.

As this motion comes up before Judge Callahan, deponent feels confident that with the excerpts from the newspapers hereinbefore set forth and the circumstantial account of the events that took place given in this affidavit, Judge Callahan's recollection will be refreshed on the incidents.

In any case, the statement by Judge Callahan that he recalls having some conversation on the matter of the new trial, at the very least overcomes the presumption of its not having occurred by reason of the bareness of the official record on this point altogether, so that the State cannot now argue that the record is entirely silent on the matter in support of its contention.

Your deponent therefore prays that the application for a rehearing be granted.

Joseph R. Brodsky

Sworn to before me this 1st day of March, 1934.

Fay Siegartel
Fay Siegartel, Notary Public, Kings County
Kings Co. Clks. No. 1104, Reg. No. 5465
(N. P. SEAL) N. Y. Co. Clks. No. 1087, Reg. No. 58632
Bronx Co. Clks. No. 86, Reg. No. 2958-35
Queens Co. Clks. No. 1973, Reg. No. 7364
Certificate filed in Westchester County
Commission expires March 30, 1935.

POSTAL TELEGRAPH TELEGRAM

December 28, 1933

HONORABLE W. W. CALLAHAN
CIRCUIT COUNTY JUDGE
DECATUR ALABAMA

MOTION FOR NEW TRIAL MAILED TONIGHT AIRMAIL STOP ARRIVE FRIDAY AT DECATUR STOP RESPECTFULLY REQUEST CONTINUANCE PENDING FILING OF AMENDED MOTION ON RECEIPT OF TRANSCRIPT OF RECORD STOP PLEASE REPLY COLLECT

Joseph R. Brodsky

POSTAL TELEGRAPH TELEGRAM

Decatur Ala Dec 29 1933

JOSEPH R. BRODSKY
ATTY BY NYC

MOTION WILL BE CONTINUED TO JANY 27

W W CALLAHAN

POSTAL TELEGRAPH TELEGRAM

January 2 1933 (4)

HONORABLE W. W. CALLAHAN
CIRCUIT COUNTY JUDGE
DECATUR ALABAMA

MOTION FOR NEW TRIAL IN NORRIS CASE MAILED TONIGHT AIRMAIL STOP ARRIVE THURSDAY AT DECATUR STOP RESPECTFULLY REQUEST SIMILAR CONTINUANCE PENDING FILING OF AMENDED MOTION ON RECEIPT OF TRANSCRIPT OF RECORD STOP PLEASE REPLY COLLECT

JOSEPH R BRODSKY

POSTAL TELEGRAPH TELEGRAM

Decatur Ala Jan 4, 1933 (4)

JOSEPH R. BRODSKY
ATTY BY NEW YORK NY

ON YOUR REQUEST NORRIS MOTION CONTINUED JANY 26th

W. W. CALLAHAN

January 10, 1934

Hon. W. W. Callahan,
Justice of the Supreme Court,
Decatur, Alabama

RE: State v. Patterson
State v. Norris

Dear Sir:

I have been retained to handle the motion for a new trial in these matters and am informed that Mr. Kingsbury, the Court reporter, will not have the minutes available until about the 25th. As the matter has now been continued until the 27th I respectfully request you to grant another continuance so that I shall have an opportunity to amend the motion for a new trial after receiving the record. I suggest that you also set a date for the argument of the motion. I would appreciate hearing from you as soon as possible as I would like to make my arrangements accordingly.

Very truly yours,

Osmond K. Fraenkel

OKF/MAG

WESTERN UNION TELEGRAM

DECATUR ALABAMA

January 18, 1934

HON. W. W. CALLAHAN
CIRCUIT COURT

WOULD APPRECIATE HAVING A REPLY TO MY RECENT LETTER REQUESTING FURTHER CONTINUANCE OF PATTERSON AND NORRIS CASES ANSWER COLLECT

OSMOND K FRAENKEL

JAMES E. HORTON,
Judge

W. W. CALLAHAN,
Judge

STATE OF ALABAMA
CIRCUIT COURT

J. H. GREEN, CLERK
Decatur, Alabama
January 17, 1934

Osmond K. Fraenkel, Counsellor,
c/o Goldsmith, Jackson & Brock,
76 Beaver Street
New York, N. Y.

Dear Sir:

I am in receipt of your letter of 10th inst. informing me that you had been retained to handle the motion for a new trial in the cases of Patterson and Norris pending in the Circuit Court of this county.

These motions have been set for the 26th day of January. However, I have no objections to continuing the cases at your request. I cannot continue them under the law for a period of more than thirty days. So on the 26th I will enter an order for continuance, but I must fix a date.

I am engaged in court out of this county the first three weeks in February. I can hear the motions February 1st, 2nd or 3rd. If not then, then I can hear the motions February 23rd or 24th. Let me know at once which of these dates you prefer, and I will continue to that date.

Yours very truly,

W. W. CALLAHAN (Per NH)

WWC/NH

January 19, 1934.

Hon. W. W. Callahan,
Circuit Court,
Decatur, Alabama

RE: State v. Patterson
State v. Norris

Dear Judge Callahan:

I have your letter of the 17th. In view of the fact that the record will not be available until the 25th and perhaps not even by that time I think it will be better if the motions were set for argument for February 23rd or 24th. I find that the 24th is a Saturday and this would be quite agreeable to me, especially as the 22nd, Washington's birthday, is a holiday here and I will be able to make the trip without unnecessary loss of working days.

May I, therefore, respectfully suggest that the argument be set for the 24th and that defendants be given until February 14th in which to file amended motions. This should give us ample time after receipt of the record providing the same is received not later than February 1st.

Very truly yours,

Osmond K. Fraenkel

OKF-MAG

James E. Horton,
Judge

W. W. Callahan
Judge

STATE OF ALABAMA
CIRCUIT COURT

J. H. Green, Clerk
Decatur, Alabama
January 22, 1934.

Osmond K. Fraenkel, Counsellor,
c/o Goldsmith, Jackson & Brock,
76 Beaver Street,
New York, N. Y.

Dear Sir:

The motions for a new trial in the cases of State against Patterson and Norris, will be continued until 9:30 A.M., February 24, 1934.

Yours very truly,

W. W. Callahan (Per N. H.)

WWC/NH

I certify that I served a copy of this motion on Wade Wright, of Counsel for the State, on March 6th 1934.

Dated Mar 7, 1934.

Elias M. Schwarzbart
of counsel for defendants

Filed in office this Mar. 7, 1934
J. H. Green, Clerk.

IN THE

CIRCUIT COURT OF MORGAN COUNTY.

BILL OF EXCEPTIONS.

No. 1,977.

THE STATE OF ALABAMA

against

CLARENCE NORRIS.

BE IT REMEMBERED that upon the trial of the above styled cause in the Circuit Court of the Eighth Judicial District of Alabama, beginning on the 20th day of November, 1933, present and presiding Honorable W. W. Callahan, Judge of said court, the following proceedings and otherwise, appearing of record, were had, to wit:

The defendant moved to quash the indictment, to change the venue and to quash the petit jury venire. It was stipulated and the court ruled that the papers filed and testimony adduced upon the similar motion to quash the indictment, the motion for a change of venue and the motion to quash the petit jury venire in the trial of Haywood Patterson were to be treated as applying to the same motions made by this defendant. The proceedings in the Haywood Patterson case relating to such motions and which, therefore, under the aforementioned stipulation and ruling are to be deemed part of the record in this case, are as follows:

JUDGMENT ON APPLICATIONS FOR REHEARING OF MOTIONS FOR NEW TRIALS

STATE OF ALABAMA,)
)
1977 vs.)
)
HAYWOOD PATTERSON.)

MARCH 9th, 1934.

STATE OF ALABAMA,)
)
1977 vs.)
)
CLARENCE NORRIS.)

This cause coming on to be further heard before the Court upon the motions or applications of the defendants for a rehearing of the motions for new trials, came the State by its Solicitor and the said defendants by attorney into open court, and the said motions being now presented to and being duly considered and understood by the court, it is thereupon considered, ordered and adjudged by the Court that the said motions or applications for a rehearing of the motions for new trials be and are hereby overruled and denied.

IN THE

CIRCUIT COURT OF MORGAN COUNTY.

BILL OF EXCEPTIONS

No. 1,977.

THE STATE OF ALABAMA

against

HAYWOOD PATTERSON.

BE IT REMEMERED that upon the trial of the above styled cause in the Circuit Court of the Eighth

Judicial District of Alabama, beginning on the 20th day of November, 1933, present and presiding Honorable W. W. Callahan, Judge of said court, the following proceedings, not otherwise appearing of record were had, to wit:

On the said 20th day of November, 1933, the defendant Haywood Patterson filed in said cause his motion to quash the indictments against him, said motion being also filed by other defendants. The said motion to quash was in words and figures as follows:

MOTION TO QUASH INDICTMENT AND/OR PLEA IN ABATEMENT.

Your petitioners, who are the defendants above named, by leave of the court, do hereby plead in abatement and make motion to quash the indictment and indictments against them jointly and severally, which said indictments are hereinafter more particularly referred to, and aver as follows:

1. The above named defendants and petitioners were heretofore indicted by the grand jury of Jackson County, on or about March 31, 1931, charged in one indictment jointly and in several indictments, for the crime of rape upon a white woman. Thereafter, in April, 1931, your defendants were tried in the Circuit Court of Jackson County and all your defendants were found guilty and sentenced to be executed. Thereafter appeals were taken from the said judgments of conviction and sentences of death to the Supreme Court of the State of Alabama. The Supreme Court of the State of Alabama affirmed the convictions of all the defendants except the conviction of Eugene Williams, a co-defendant, whose conviction was reversed and his case remanded to the Circuit Court of Jackson County.

3. Thereafter appeals were taken from the orders of affirmance of the convictions of all the defendants except

Eugene Williams to the Supreme Court of the United States, and said appeals resulted in reversals of said convictions.

4. Thereafter the defendants moved in the Circuit Court of Jackson County for a change of venue and the case of said defendants was transferred to the Circuit Court of Morgan County for trial.

5. Thereafter the defendant Haywood Patterson was tried in the Circuit Court of Morgan County and convicted and the sentence of death was imposed. Thereafter the defendant, Haywood Patterson, by his attorneys, moved for a new trial before the Honorable James E. Horton, the Judge who presided at his trial, and said motion was granted and the judgment of conviction and the sentence of death set aside. All of the defendants above named are now awaiting trial under the indictment and indictments originally found against them.

6. All of the above defendants are negroes of the African race.

7. Each and every indictment hereinbefore referred to found against all the defendants jointly and severally was and is null and void and without legal effect, and was found and made in a manner and by methods contrary to law, and in that persons of the negro race, duly qualified under the laws of the State of Alabama to serve as members of the grand jury that found the said indictments hereinabove referred to were excluded from the list from which the said grand jury was drawn and from the said grand jury, solely by reason of their race and color as will appear more particularly hereafter.

7. That in the year 1930 or 1931, the duly constituted authorities of Jackson County, prepared a roll of male citizens in Jackson County, from which roll the panel of the Grand Jury, and finally the grand jury which found the indictments against your defendants hereinabove referred to, were selected. That said roll above referred to consisted wholly of white persons and contained the name of no negro citizen who is qualified by

law to serve on grand juries solely by reason of the fact that all qualified negroes were arbitrarily excluded from said roll and have been arbitrarily and systematically excluded for many years from the rolls of grand juries by the authorities designated by law to make up said roll solely because of their race and color.

9. Therefore the panel from which was drawn the grand jury which found the indictments against your defendants, and the said grand jury contained the name of no negro citizen qualified by law to serve on aforesaid grand jury.

10. That at the time when the said roll above referred to was prepared and when the panel of the aforesaid grand jury and the said grand jury were drawn, there were approximately 36,000 persons who were citizens of Jackson County, of whom approximately 34,000 were white and approximately 2,700 were negro.

11. That at the said time when the aforesaid roll was prepared and when the panel of the aforesaid grand jury and the grand jury were drawn, there were approximately 18,000 male citizens of Jackson County, of whom approximately 16,700 were white and approximately 1,300 were negro.

12. That at the said time when the aforesaid roll was prepared and when the panel of the aforesaid grand jury and the said grand jury were drawn, there were approximately 8,000 male citizens of Jackson County over the age of twenty-one and under the age of sixty-five years, who were qualified under the laws of the State of Alabama to serve as grand jurors in Jackson County. That of this number approximately 7,400 were white and approximately 600 were negro.

13. That at the said time when this aforesaid roll was prepared and when the aforesaid panel of the said grand jury and the said grand jury were drawn, there were approximately 600 male citizens of Jackson County of the negro race who were duly qualified to serve as grand jurors and to be enrolled on the aforesaid grand jury roll, and who were eligible for such enrollment and pos-

sessed all of the requirements set forth in the laws of the state of Alabama for services as jurors.

14. That the Code of the State of Alabama (1923), Section 8603, relating to qualifications of jurors provides as follows:

> "*Qualifications of persons placed on jury roll and in jury box.*—The jury commission shall place on the jury roll and in the jury box the names of all male citizens of the county who are generally reputed to be honest and intelligent men, and are esteemed in the community for their integrity, good character and sound judgment, but no person may be selected who is under twenty-one or over sixty-five years of age, or, who being afflicted with a permanent disease or physical weakness is unfit to discharge the duties of a juror, or who cannot read English, or who has ever been convicted of any offense involving moral turpitude. If a person cannot read English and has all the other qualifications prescribed herein and is a free holder or householder, his name may be placed on the jury roll and in the jury box."

It is further provided in Section 8606 of the aforesaid Code as follows:

> "*Jury Commission must place name of every qualified person on the jury roll.* * * * The jury commission shall se that the name of every person possessing the qualifications prescribed by this chapter to serve as a juror shall be placed on the jury roll and in the jury box."

15. That at the time when the said roll was prepared and when said panel of the aforesaid grand jury and the grand jury were drawn, there were approximately 600 negro citizens of Jackson County, who were male citizens over the age of twenty-one years and under the

age of sixty-five years and who were generally reputed to be honest and intelligent men, and who were esteemed in the community for their integrity, good character and sound judgment, and who were not afflicted with a permanent disease or physical weakness rendering them unfit to discharge the duties of grand jurors, and who had never been convicted of any offense involving moral turpitude. Among the aforesaid 600 negro citizens there may have been some who could not read English but who notwithstanding possessed all the other aforesaid qualifications and were free holders or householders of Jackson County.

16. That members of the negro race, duly qualified by the laws of the state of Alabama to serve on grand juries and petit juries in the state of Alabama and in Jackson County, have been and are systematically, arbitrarily and in violation of law excluded from serving as jurors as aforesaid solely because they are members of the negro race, that is, by reason of their race and color.

17. That for the last twenty-five years or more the duly constituted authorities of Jackson County having charge of the preparation of the grand and petit jury rolls, and the selection of panels of grand juries and petit juries in Jackson County, and generally of the laws and regulations pertaining to jury service in Jackson County, have systematically, arbitrarily and invariably refused, neglected and omitted to place the names of negro citizens of Jackson County on aforesaid jury lists although the said negro citizens were and are qualified under the laws of the State of Alabama to serve as such jurors and grand jurors; and said refusal, neglect, omission and exclusion were due solely to the race and color of the aforesaid qualified negro citizens.

18. Upon information and belief, no negro has served on any grand jury or petit jury in Jackson County for more than twenty-five years.

19. That the arbitrary refusal, omission and neglect to place the names of qualified negroes on said roll and rolls, as hereinabove more fully set forth were and are to the detriment, prejudice and damage of the defendants above named, and each of them and in violation of the Constitution and Laws of the State of Alabama, and their rights thereunder.

20. That the arbitrary refusal, omission and neglect to place the names of qualified negroes on said roll and rolls, as hereinabove more fully set forth were and are to the detriment, prejudice and damage of the defendants above named, and each of them and in violation of the laws and Constitution of the United States and the amendments thereto, and their rights thereunder.

21. That the defendants have not and do not waive their right to plead in abatement and to move to quash the indictments for the reasons herein set forth, nor for any other reason whatsoever, and do now again plead in abatement and move to quash the indictments found against them.

22. Your petitioners make the original and amended pleas in abatement and motions to quash the indictments, together with the exhibits and affidavits appended thereto heretofore made and filed, and the hearing thereon heretofore had, a part of this petition, plea in abatement and motion to quash, as if fully set forth herein. Hereto annexed are copies of the following affidavits submitted with and annexed to said earlier motion to quash: affidavits of Rev. W. C. Crutcher, F. A. Matthews and Robert James.

DEMAND is hereby made upon the Honorable Thomas E. Knight, Attorney General of the State of Alabama, and the Solicitor in charge of these cases, to reply specifically to each and every allegation herein set forth, within five days after the service of a copy of this petition, plea and motion upon them or either of them.

NOTICE is hereby given that defendants will ask leave of the court to submit further testimony, both oral and written in support of the allegations herein contained that may be controverted by the state of Alabama.

WHEREFORE, your petitioners pray for an order quashing the indictment and indictments aforesaid and for such other and further relief as may be just and proper in the premises, for all of which no previous applications has been made except as hereinabove set forth.

Dated: November 20, 1933.

G. W. CHAMLEE,
S. S. LEIBOWITZ,
J. R. BRODSKY,
Attorneys for Defendants.

(Signed) HAYWOOD PATTERSON,
OZIE POWELL,
WILLIE ROBERSON,
OLEN MONTGOMERY,
CLARENCE NORRIS,
CHARLEY WEEMS,
ANDY WRIGHT,
By G. W. CHAMLEE, Atty.,
Defendants and Petitioners.

State of Alabama,
County of Jefferson, } ss.:

Haywood Patterson, Ozie Powell, Willie Roberson, Olen Montgomery, Clarence Norris, Charley Weems and Andy Wright, make oath in due form of law, that they are the defendants and petitioners herein and that the facts as stated in the foregoing petition, plea in abate-

ment and motion to quash the indictments, are true to the best of their knowledge and belief.

(Signed) HAYWOOD PATTERSON,
OZIE POWELL,
WILLIE ROBERSON,
OLEN MONTGOMERY,
CLARENCE NORRIS,
CHARLIE WEEMS,
ANDY WRIGHT.

Subscribed and sworn to before me this
19 day of November, 1933.

F. L. Erwin,
Notary Public.
(Seal)

Exhibit "A", attached to said petition, is in words and figures as follows:

Reverend W. C. Crutcher, 1109 Spears Avenue, Chattanooga, Tennessee, makes oath in due form of law that he is a minister of the gospel and has been pastor of St. Elizabeth Baptist Church of Scottsboro, Alabama, for 28 years, and that he has resided in Chattanooga, Tennessee, three years and pastors once a month at Scottsboro, Alabama.

He further makes oath that he is personally acquainted with John Sanford, Mark Taylor of Scottsboro, Alabama, L. C. Stapler of of Limrock, Alabama, K. D. Snodgrass of Holly Wood, Alabama, P. Toliver of Hollywood, Alabama, M. F. Timberlake of Stevenson, Alabama, Cam Rudder, Stevenson, Alabama, Hugh Collier, Stevenson, Alabama, A. Joseph, Stevenson, Alabama, Louis Cole, Stevenson, Alabama, Ed. Redd and John Branch of Bridgeport, Alabama, and that these men attend his church and some of them are members thereof and he has been associated with and knows the above named parties

for between 20 and 30 years and that each and all of the above named parties are male negro citizens over 21 years of age and in his opinion under 65 years of age, and male citizens of Jackson County, Alabama, and generally reputed to be honest and intelligent men and are esteemed in the community for their integrity, good character, and sound judgment and are not afflicted with a permanent disease or physical weakness or unfit to discharge the duties of a juror and on information and belief that none of them has ever been convicted of any offense involving moral turpitude and they are all householders and freeholders and can read the English language.

Affiant further states that he is personally acquainted with John Sanford of Scottsboro, Alabama, and that he is the owner of land, pays taxes and is a householder and as above recited possesses all the qualifications to make him a juror as provided in the Act of the General Assembly of the State of Alabama, and is free from the disqualifications therein prescribed, and that Mark Taylor of Scottsboro, Alabama, owns land, pays taxes and operates a pressing club, and as above stated, is a male citizen of Jackson County and generally reputed to be honest and intelligent and esteemed in the community for his integrity, good character, and sound judgment, and is a freeholder and householder and qualified to perform jury duty under the laws of the State of Alabama.

Affiant further states that L. C. Stapler of Limrock, Alabama, owns a farm and is a married man and can read, write, and as above recited, is a male citizen of Jackson County and generally reputed to be honest and intelligent and is esteemed in the community for his integrity, good character and sound judgment and is over 21 years of age and under 65 years of age and not afflicted and is free from the disqualifications prescribed by Section 8603, Alabama Code 7923, and possesses all the qualifications therein specified for jury duty in Jackson County, Alabama.

Affiant further states that K. D. Snodgrass of Hollywood, Alabama, owns land, is also a freeholder and a householder and can read and write, and as above stated, is a male citizen of Jackson County and is reputed to be honest and intelligent and esteemed in the community for his integrity, good character and sound judgment, and is over 21 years of age and under 65 years of age and not afflicted with a permanent disease or physical weakness and can read the English language and has never been convicted of any offense involving moral turpitude and possesses all the qualifications required by the law of the State of Alabama, and is free from the disqualifications prescribed for jury duty in the State of Alabama.

Affiant further states that P. Toliver of Hollywood, Alabama, is a male citizen of Jackson County, Alabama, and generally reputed to be honest and intelligent and esteemed in the community for his integrity, good character and sound judgment and is over the age of 21 years and under the age of 65 years of age and not afflicted with permanent disease or physical weakness such as would render him unfit to discharge the duties of a juror, and he can also read the English language and has never been convicted of any offense involving moral turpitude, and he possesses all the qualifications prescribed by the law of the State of Alabama for jury duty and is free from the disqualifications thereof as affiant is informed and believes. Affiant further states, that he can vouch for all the parties named in the body of this affidavit, all of whom are negroes, possessing all the qualifications prescribed by the law for jury duty, and also that all of said aforementioned parties are free from the disqualifications prescribed by the laws of the State of Alabama.

(Signed) REV. W. C. CRUTCHER.

Subscribed and sworn to before me
this 17th day of March, 1933.

G. W. Chamlee, Jr.,
Notary Public,
Hamilton County, Tenn.

My commission expires December 13, 1935.

Exhibit B, annexed to said petition, is in words and figures as follows:

F. A. Patterson makes oath in due form of law, that he is now a citizen of the State of Tennessee, and that he is well acquainted in Jackson County, State of Alabama, and has been for many years, and that for many years, and on information he avers that for nearly or about sixty years, that negroes have been excluded from all the grand juries and trial juries in the Circuit Courts of Jackson County, and that a system of Government has been adopted there and operated by the officials empowered to administer the jury laws in Jackson County, Alabama, so that negroes were excluded from all juries in the Circuit Courts of said Jackson County, Alabama, for nearly or about sixty years, practically ever since the end of the Civil War or the war between the States when the negroes were emancipated. Affiant further states that all of the defendants named in the indictment in the above styled cause, seven in number (with two who are reputed to be juvenile cases), are all negroes of the African race, and indicted for rape upon the person of a white woman named Victoria Price. That he is advised that the record in these cases show, that for the March Term of the Circuit Court of Jackson County, Alabama, that the Grand Jury was composed of white men only, to-wit: Chas. Morgan, Jas. H. Rogers, J. H. Cox, G. W. Minton, Geo. B. Phillips, Wm. Wash, J. P. Brown, Arthur Gamble, C. A. Mason, Noah Manning, J. M. Tidwell, E. A. Chambliss, John G. Hicks, Robert E. Hall, Raymond Hodges, C. D. Paul, J. N. Ragsdale and Walter Berry. That this grand jury was called back into special session, for March 30th, 1931, when the indictments were returned against the defendants in this class of cases, and in those above styled cases, as appears from the transcript certified from the Circuit Court of Jackson County, Alabama, to the Circuit Court of Morgan County, Alabama.

That he is personally acquainted with many negroes who are male citizens of Jackson County, Alabama, be-

tween the ages of twenty-one years and sixty-five years, such as Bud Moore, a merchant of Scottsboro, Henry Ross, and Elisha Matthews, and that he knows by reputation and by personal acquaintance many other male negro citizens of said County of Jackson, in the State of Alabama, to-wit: K. D. Snodgrass, Mark Taylor, John Sanford, Travis Mozley, Lawrence Hunter, Oliver Little, with many others; that these men and each and all of them are generally reputed to be honest and intelligent men, and are esteemed in the community for their integrity, good character and sound judgment, and no one of them is afflicted with a permanent disease or physical weakness that renders him, or them, unfit for the discharge of the duties of jurors, and they can read and write English, and they nor neither one of them has ever been convicted of any offense involving moral turpitude, and are all householders of Jackson County, Alabama. Affiant further states on information, that many threats have been reported in Chattanooga, against negroes and that many of them are afraid to go to Scottsboro, or Decatur, for fear of personal violence, and that Claude Patterson, the father of Haywood Patterson, reported that he was insulted, threatened and cursed at Scottsboro because he went there to attend the hearing of the motion for a new trial for his son, and that affiant does not want to attend court at Decatur for fear of personal violence, to him. Affiant states on information that negroes serve on the Federal Juries in Alabama, and that in his opinion, each and all of the negroes named in this affidavit, possess all of the qualifications required by the laws of the State of Alabama, and that they are free from all the disqualifications prescribed by the laws of the State of Alabama for jury duty.

(Signed) F. A. MATTHEWS.

Subscribed and sworn to before me
this 25th day of March, 1933.

G. M. CHAMLEE, Jr.,
Notary Public,
Hamilton County, Tennessee.
My commission expires October 13, 1935.

Exhibit "C", annexed to said petition is in words and figures as follows:

Robert James makes oath in due form of law that he resides at 31½ W. 20th Street, Chattanooga, Tennessee, that he formerly lived in the State of Alabama and is acquainted with a large number of citizens of Jackson County, Alabama, among the negro race, and that he is acquainted with the following negro citizens of Jackson County: John Sanford of Scottsboro; L. C. Stapler of Limrock; Will Watkins of Fackler; W. T. Talley of Stevenson; Can Rudder, Stevenson; Hugh Collier, Stevenson; A. Joseph, Stevenson; Louis Cole, Stevenson; Ed. Redd, Bridgeport, and John Branch, Bridgeport, and that he has been acquainted with these men for more than thirty years, and that they and each of them are generally reputed to be honest and intelligent men and esteemed in the community for their integrity, good character and sound judgment, and are all male citizens of Jackson County, Alabama, and over 21 years of age, and on information he says they are under 65 years of age, and on information that none of them has ever been convicted of any offense involving moral turpitude and that they are all householders, or freeholders of Jackson County, and can read the English language and are members of the negro race. On information he says that none of them is afflicted with a permanent disease or physical weakness such as to render him unfit to discharge the duties of a juror, and that each of them bears the name of being good citizens and taxpayers of said county. Affiant would appear at court in person, but from reports he deems it unsafe for him to do so and for that reason he sends this affidavit that he can vouch for all of these men.

his
(Signed) ROBERT X JAMES.
mark

Witnessed by ELLA R. MOSER.
Subscribed and sworn to before me
this 24th day of March, 1933.
J. B. WHITE,
Notary Public,
Hamilton County, Tennessee.
My commission expires January 29, 1935.

I hereby certify that I served a copy of this motion with exhibits thereto on Hon. Thomas E. Knight, Jr., Attorney General.

November 20, 1933.

G. W. CHAMLEE.

The State denied each and every allegation of the motion to quash the indictments.

J. E. MOODY, sworn on behalf of movants, testified:

Direct Examination:

I am a member of the Jury Commission of Jackson County, Alabama. I was appointed in March, 1931. I have the custody and control of the jury rolls for Jackson County, for that year, 1930-1931. (Gets two books and brings them in.) That is an old book, and extends back for a number of years. It contains the list of 1931. This roll is alphabetically arranged for each beat or precinct. This was the old jury commission shown above the red lines. We were ordered to empty the jury box in 1931, and over the red lines is what we tore up. The jury you are inquiring about would be above the red lines. That book purports to arrange the names in alphabetical order by precincts.

The witness testified further: The names above the red lines constitute the names of the persons who were on the jury roll from which was drawn the grand jury that found this indictment in this case. They appear that way all through the book; each precinct. It is the names above the red lines that constituted the jury roll from which this grand jury was drawn. This book is the jury roll of Jackson County. "1922" is on the back of the book. I judge that I don't know anything about the

jury roll nor the jury box previous to my time. I don't know when the jury box was emptied before I went into office March, 1931. I do not know when the jury roll was made above the red lines. It starts in 1923. The book is arranged so that it gives the term, the year and the court in which the juror served as a juror. I do not know when the roll from which was drawn the grand jury in this case when that was prepared. I can't tell you when the jury box was emptied before I took charge. The jury roll from which was drawn the grand jury that found the indictment is constituted by the names above the red lines.

I am between 39 and 40 years old, a citizen of Alabama. I have lived in the State of Alabama all my life and in Jackson County all my life. I have lived in Jackson County for the last ten consecutive years. I attended court while I was a student in Jackson County in Scottsboro. I attended jury trials there. I don't remember the first time I ever attended a trial. I have been there as a student and youngster on numerous occasions. I have never seen a negro on a jury in Jackson County in any of these years. I was not familiar with the procedure of drawing a grand jury in March, 1931. I became a jury commissioner in March, 1931, and was appointed by Governor Miller. Three jury commissioners were appointed in 1931. The grand jury that found the indictments against these defendants had been drawn and served in a regular session of the Court and had been excused but not discharged and were called back by the Court in Special Session.

The other members of the jury commission were:

Felix C. Trice, Princeton, Ala., and Ernest Rush, I believe his post office is Henegar, Ala., Route One. These men did not serve before March, 1931. The jury commissioners before March, 1931, were Bass Station and Mr. Stewart of Scottsboro; I don't remember the other, and Kelly Morgan was clerk of the board. There were

supposed to be three. The three appointed the clerk. The clerk was not one of the three. I was elected as President of the Jury Commission. J. D. Snodgrass, Jr., was elected clerk. We kept minutes of the proceedings of the board. They are in Scottsboro, in a book furnished by the county, an official book. That was a book that had been used by the other commissioners before our time. That book is now in Scottsboro in the probate judge's office. After I was elected as president, and we elected Mr. Snodgrass as clerk, we proceeded to search for names, and have the clerk search for names from each precinct and prepare and bring them before us; names of persons to be considered to be put on the jury roll. After we got the names before us, we summoned men from the different precincts to come before us, in order to get information about the names of persons we had. Some of them may have been on the list we had prepared. After we did that, as I said, we summoned men from each precinct in the county and we swore these men, and asked them to take the list that we had prepared and before us, and go over the names, and to give us the names of every male citizen of Jackson County that would be qualified as a juror. These proceedings were entered in the minutes, I think, I am not positive because I don't remember. The secretary signed the minutes in my presence. Minutes were kept of each meeting of the jury board each day. Well, I think it was. I am not positive about that. I don't remember all about the minutes. We kept our minutes and they were properly signed. I don't know whether every official act we done was put on the minutes or not. One time when we filled the box in March, 1931, and then again when we began to fill the box on September 9, 1933, we followed the same procedure that we did back in March, 1931. We kept minutes in September, 1933. I was not familiar with the custom and the method or the manner in which the names were selected for the jury roll for some years prior to March, 1931, the month that I took office. After I became jury commissioner is the first time I knew how, and in what manner the jury

roll was prepared. I had no knowledge or information as to how it was prepared before March, 1931. I did not bring before me personally, as jury commissioner, any individual whose name was to go on that jury roll, since I took office, and question him as to his qualifications. So far as I know, the other two commissioners did not bring before them,—of my own personal knowledge,—any persons from whom they inquired as to their qualifications. The jurymen that I know personally that were added to that jury list are all whites.

Thereupon the witness examined the jury roll page by page and picked out the names of those he personally knew. All the names were those of white persons until the witness reached Precinct 10, page "8". The witness then stated: Page "S", headed by Nathan Sanders, there being on this page 18 names. I know Nathan Sanders, Robert M. Starkey, Albert Starkey, Frank Sharp, Frank Sharp, Thomas W. Starkey, J. William Sharp, Albert L. Starkey, Bob Starkey, Jr., Robert O. Starkey, Sr., Charles F. Simmons, Louis Sebring, J. W. Starkey, J. D. and A. L. Starkey, Charles F. Simmons, James Sragner, Louis N. Sebring, all white. Here on the jury roll is a negro named K. D. Snodgrass that I know around Scottsboro. This K. D. Snodgrass is at Hollywood, on this page.

After recess, examination of the witness, Mr. Moody was suspended and another witness sworn:

C. A. WANN, being sworn in behalf of petitioners, testified:

Direct Examination:

I live in Scottsboro, Alabama, and am Clerk of the Circuit Court and have been for the past five years. I have lived in Jackson County all my life. I attended the

courts often before I became clerk. Twelve or fifteen grand juries, and different kinds of juries have been organized since I became clerk. I never had anything to do with the custody of this jury roll in any way, shape, form or fashion. I am not familiar with the handwriting in this book. I had nothing to do with the selection of the grand jury, during the time that I have been clerk either directly or under order of the court. I make lists of the grand jurrors drawn for a circuit court to put on the minutes. Eleven, maybe twelve different grand-juries have served since I have been clerk. No colored men have been on any of these grand juries during all the time I have been Clerk in Jackson County. I have had occasion to go to court, criminal court on many different occasions. I do not know of one single instance where a negro has served on a grand jury in Jackson County, in all of my experience. I never had the custody of the minutes of the jury commissioners.

J. N. Ragsdale, Charles Morgan, James H. Rogers, J. H. Cox, G. W. Minton, George B. Phillips, William Rash, J. P. Brown, Arthur Gamble, C. A. Mason, Noah Manning, J. M. Tidwell, A. E. Chambliss, John G. Hicks, Robert E. Hall, Raymond Hodges, C. D. Paul and Walter Perry, these are the names of men that served on the grand jury, none of these is a colored man. This grand jury was notified to come to court by the sheriff. I handed the sheriff the list. I got that list from the venire drawn by the court, in open court. The venire was drawn from the box. It was Judge Hawkins that drew that list. I was there at the time and in that box was the jury roll, all the jurors, except what already may have been drawn out. There is no special box for grand jurors. They were drawn from a box containing all the names of jurors of the jurors of the county. Judge Hawkins drew out these names you mentioned. He put them in an envelope and handed them to me. Then I wrote out the summonses for the jury.

This witness examined the jury roll page by page, and stated that all the persons he knew were white, except

those in Precinct 21, page "S". As to these he testified as follows: Page "S" has 38 names, beginning with Clem Shelton. I know John C. Shook, John Shubert, Tyson M. Sloan, J. Clyde Spivey, Edward C. Snodgrass, Hunt Stuart, Eli D. Sanders, J. Pontiff Skelton, Claude Spivey, C. W. Shipp, Tyson M. Sloan, John Shubert, John C. Proctor, Robert Shook, C. S. Spivey, Hugh Swain, L. E. Skidmore, T. M. Sloan, John L. Staples, J. Exom Sumner, Robert Shook, John C. Shook, all white. Hugh Sanford,—who is colored.

Mr. Leibowitz: May the record show the page identified is in bound volume from which these gentlemen have been reading, entitled "Jury Roll, 1922, Jackson County" and that immediately following this name, "Hugh Sanford" are two red lines, a portion of the writing being on both lines; that is for the purpose of identification, and below the red lines are the figures 3/20/31, followed by the name "Stewart, Claud".

J. E. MOODY, recalled for further examination.

Re-direct Examination:

I first saw this book (indicating Jury Roll Book of 1922) from which these witnesses have been testifying in March, 1931. I don't remember just exactly how I obtained it. But I did obtain the book. I had the book with me at the time of the jury commissioners' meeting I found some names on that book that the jury official had been writing in there prior to the time I took office.

The following then occurred:

Q. Did you proceed to draw, or have drawn, the red lines across the page, each page after the last name? A. Yes, sir.

Q. Who drew that red line? A. Our clerk.

Q. What is your clerk's name? A. Shodgrass, J. D., Jr.

Q. He drew the red lines? A. Yes, sir.

Q. He drew them in the presence of the Jury Commission? A. Yes, sir.

Q. That is, when you first took office? A. Yes, sir.

Q. You saw him do that? A. Yes, sir.

Q. By "Red Lines" I refer to these red lines (indicating)? A. I think that the first line was drawn with a pencil.

Q. The pencil lines you refer to are on the page Letter "A" and Letter "B", in precinct one? A. I wouldn't be positive about that.

Q. Outside of these two, the others are all red lines and start with the letter "C", precinct one? A. Yes, sir.

Q. Whatever you wrote, or your clerk wrote in this book was below the red lines? A. Yes, sir.

Q. You are sure about that? A. Yes, sir.

Q. Did you do any writing above the red lines? A. No, sir.

Q. In no case? A. No, sir.

Mr. Leibowitz: I am asking that these books be impounded by the court.

Court: All right, sir, they are held by the court.

The witness further testified: I got this book, I drew the red lines across the page and we entered these names after we decided who we would place in the jury box, I mean the names below the red lines. We would make his card, put his name on his card, with his precinct number, and then put his name on the jury roll. All of the writing below the red line was written by my clerk. Some of the writing is mine, and some of it is my clerk's. Our clerk did most of the writing, made the cards. All of the writing on these pages below the red lines, is either in my writing or the writing of my clerk, J. D.

Snodgrass; Jr. I know none of this board now were on the board that preceded us. I did not tell the clerk to put two heavy lines after the last name. He left space there after the last name. We drew in some of the precincts more names than in others, on account of the population; some of the precincts have very little population.

The following then occurred:

Q. See that, see that, see that, wouldn't you say that is written over the red line? A. No, sir, I can't see well enough to tell that.

Q. That is the name of a negro isn't it? A. Mark Taylor, he is a negro, yes, sir.

Q. He is a presser at Scottsboro, isn't he? A. Yes, sir.

Q. I would like to have this page identified?

Court: It is last name above red line in letter "T," precinct one. That gets it.

The witness further testified:

I don't remember whether or not that name "Mark Taylor "was on that list when I drew the red lines. I don't know whether the name "Mark Taylor" has been written in since the red lines were drawn. I can't tell whether that writing is over the red line, by looking at it with the naked eye. I see that there is no space left there. As you go on here and turn the pages I can see that there are spaces left before the red line is drawn.

The following then occurred:

Q. There is the same situation there at that line, isn't there?

Court: What is the last name there?

Mr. Leibowitz: Taylor Cargile.

Court: That name is not in controversy, as I understand it?

Mr. Leibowitz: No, sir.

A. I can't say whether it is or not.

Q. Turn the pages in the book, now you come to the name Cam Rudder, Beat 3, you know that he is a negro at Stevenson, don't you? A. No, sir.

Q. I will ask you to take particular notice of the name Cam Rudder, the writing of that name is superimposed on the red line, and there is no space at all, you see that? A. I can see there is no space there.

Q. Who wrote that name Cam Rudder and when? A. I don't know anything about that.

Mr. Leibowitz: I ask the court to identify page "J," precinct 3.

Court: All right. That contains the name Cam Rudder?

Mr. Leibowitz: Yes, sir.

The witness testified further:

All of these pages (turning pages) have spaces after the last name before the red lines. There is one where there is no space. Bain F. Mitchell, I know Bain F. Mitchell and he is not a negro. I don't know whether that red line is over the ink or under the ink. Bain F. Mitchell is a white man. He has never served on a jury according to that writing. You can tell from the book whenever they served on juries. It is entered here (indicating) when they serve. When a name is taken out of the jury box, and he actually served on the jury, a notation is made that he did serve. In making that extension out there, and there is no entry against that name, that means they are still in the box at the time, and therefore no entry is made. You see we were instructed to empty the jury box after we got our commission; in other words after we were appointed on the jury board, we were instructed to empty the jury box and refill it, by the law, the 1931 Acts. I don't know whether these names above the red line were in the jury box, because we didn't have anything to do with the names above the red line.

The following then occurred:

Q. Do you know Claiborn Parton? A. No, sir.

Mr. Knight: He has served on the jury; it shows that he served in 1928. Please identify that page with Claiborn Parton's name, which is Page "P," precinct No. 3.

Q. (After turning pages.) Here we have Cam Rudder again, he is a negro, isn't he? A. No, sir.

Q. You see the name "Cam Rudder" on this page? A. Yes, sir.

Q. There is no space here at all on page "R", between the red line and the last name? A: No, sir, no space at all.

Q. There are spaces all along here? A. Yes, sir.

Q. Here is a new page, letter "S", district No. 4, last name E. W. Smith, can you tell us whether or not that is under the red line or over the red line? A. No, I can't tell.

Q. Of course, if it turns out that any of these names are superimposed on the red lines, then the names must have been written in there after you entered into office?

Mr. Knight: We object to that. Sustained. Exception by defendants.

Q. (By the court:) Did you see all of these red lines drawn all through the book? A. I can't say that I did, no, sir.

Q. The clerk drew the red lines? A. Yes, sir.

The Court: That book is in evidence, why wade through it with this witness; the book is in evidence and that would just be his opinion about it. Just ask him about the names.

Mr. Leibowitz: Your Honor's suggestion may be entirely practical.

Q. Turn to beat ten, page "S", I call your attention to K. D. Snodgrass, he is a negro isn't he? A. The only K. D. Snodgrass I know of is a negro.

Q. You see no space there do you?

Q. Can you tell us whether the name is written over the red line, or is under it? A. It is right over the red line, but I don't know whether the red line is over the writing, or the writing is over the red line.

Q. Turn to the name Ples Larkin, Page L, District No. 14, he is a negro isn't he? A. Yes, sir.

Q. No space there, is there?

Mr. Leibowitz: I ask that this page be identified.

Court: All right.

(Page "L", Precinct 14, is identified as containing the name Ples Larkin.)

Mr. Leibowitz: We want for specific identification, precinct 10, the letter "K. D. Snodgrass".

Court: All right.

Q. Do you know Daisy Clemons? A. Yes, sir.

Q. He is a white man, isn't he? A. Yes, sir.

Q. (By the court:) Whose writing is that? A. I think it is Kelly Morgan's.

Mr. Leibowitz: May that be offered, letter "C", Precinct No. 21, first page at bottom.

Q. Now, letter "G", page 21? A. That don't touch the lines at all.

Q. Precinct 21, letter "G", Hugh D. Garland, he is a white man, isn't he? A. Yes, sir.

Q. Now, same Precinct, 21—Letter "M", is a man by the name of Moseley, Travis Moseley, he is a negro isn't he? A. Travis Moseley is a negro, yes, sir.

Q. Part of that writing goes in the red, can you tell whether or not the writing is on top of or under the red? A. I can't see well enough to say.

Mr. Leibowitz: I ask that that page be identified, Page "M", Precinct 21.

The Court: All right.

Q. Now then, Precinct 21, page "S", at the foot of the page is Hugh Sanford, he is a negro, isn't he? A. Yes, sir.

Q. There is no space there? A. No, sir.

Q. Can you tell whether that is written over the red line or not? A. No, sir.

Mr. Leibowitz: I ask that this book be impounded by the court.

The Court: You have asked for that once. It is offered in evidence, and that means that it is here and the court will hold it.

Q. We call your attention to Precinct 24, under the letter "R", there you see the name Roscoe Ryan, is he a negro? A. No.

Q. White man? A. Yes, sir.

Q. Do you know whether his name is under the red line or over it? A. No, sir.

Mr. Leibowitz: I ask that this book be impounded too, Judge.

The Court: Yes, sir.

Mr. Leibowitz: And we ask your Honor to direct the clerk that nobody is to touch this book until the court so orders, until the further orders of the court.

Court: I have already told the clerk to take them in charge. He is a sworn officer and is supposed to know what he has to do.

C. A. WANN, recalled for further examination, continued his examination of the jury roll. All names known to him in Precincts 22 to 28 were of white men.

At this point court recessed until 7:15 P. M. Upon reconvening of court, Mr. Wann's examination was suspended and another witness sworn.

KELLY MORGAN, sworn on behalf of defendants, on motion, testified:

Direct Examination:

I am thirty-nine years old and have lived in Scottsboro for 20 years continuously. Prior to going to Scottsboro, I lived at Langston, across the river, in that same county. Prior to that time I resided in the State of Texas. I first moved into Jackson County about 1911. Since I have lived in Jackson County, I did not visit the court house while court was in session much until the last few years. I did visit it some before I became an official. I never saw a negro on a grand jury in Jackson County. I worked in a drug store up until I was about 25 or 26 years old. I was City Marshall for about a year in 1925 or 1926, something like that. I don't remember the year exactly. From the time I became an official in 1925 or 1926, on up until 1931, in the month of March, I had occasion to go in and out of the courts in Jackson County during the sessions of the criminal court. I have never, in my own knowledge, known of the service of a negro on any grand jury in Jackson County, during that time. No, sir, I don't think I have. I first became officially connected with the administration of the jury machinery of Jackson County the first year after Governor Graves was first elected. He went into office January 14th, 1927. It seems like the jury commissioners were appointed and took office and appointed me clerk. The jury commissioners that appointed me as clerk were Hunt Stuart—he is in court, and W. T. Jenkins—he is in court; and W. B. Wheeler was on the first term. W. B. Wheeler is in Pisgah, Alabama. Mr. Wheeler continued in office about one

year. J. L. Wynne succeeded him. He is not in court. The jury commission consisted of three men. One was supposed to go out in two years and one in three years. That was the procedure, I don't know which one was appointed for a year or two years. Up until Mr. Moody became commissioner, Mr. Stuart, Mr. Jenkins, Mr. Wheeler and Mr. Wynne were the only ones that acted from 1927 to 1931. I was clerk until the Miller administration went in January, 1931. At no time did I take leave of absence and nobody substituted in my place as clerk. After my commissioners took office, and I was appointed clerk, I started acting with them. Minutes were kept of that session showing my appointment as clerk by the commissioners. That entry was made showing I was appointed. I was paid so much a day while in session. The commissioners held three or four sessions from the time of my appointment until the time I completed my time; once each year is what we generally held, under the old law. At that time I don't think there was any specific month. It was owing to how the jury box was; if it was low we refilled it. My duties as clerk of the jury commission were to keep the jury roll, whatever the commissioners instructed me to do, post their names on the roll and on the cards. I did not necessarily have anything to do with the selection of the names in any way. I did sometimes if I knew a man that I thought would be all right. My duties didn't call for that. My duties were to keep the books and the minutes of the jury commissioners, and I posted names, such names as you were directed to post by the jury commissioners on this jury roll which is contained in these two volumes that have been referred to here, and which are in the presence of the court. I never had occasion to go to any persons for the purpose of getting names for the jury roll. The only duties I did perform were to take the minutes of the meetings of the jury commissioners and the posting of names on the jury roll and preparing the list, the list we got the jurors from. I prepared that list under the direction of the jury com-

missioners. I didn't put any names on that list of my own accord. The commissioners told me to put these names on the list at their first meeting. They first instructed me to read the law as to the duties of the clerk, and I did that of course. I posted names at every meeting. The first meeting we posted the names of those that had served the year before. I refer to the jury roll book; I guess that is the book there (indicating). That one (indicating) is, and I believe this one is too. Yes, sir, that is the jury roll. These are the only books I had. I don't know whether they have got any new ones. Those seem to be the books. These two volumes contain all of the precincts of Jackson County. Every year we met we posted names. The minutes would show when we met, where, and how many days we were in session. The last I saw of the minutes, they were in the probate judge's office in Jackson County. They were in a separate book from that, a similar book. It was just a plain book; said "Jury Commissioners' Minutes," if I remember. It may have said something across here (indicating). It had been used several years, and I haven't seen it in a long time. It may have said "Jury Minutes" or something like that, but it was a similar book.

The witness then wrote a sample of the name: "Mark Taylor", "Taylor, Mark, Presser, Scottsboro".

The witness further testified: This writing here, Precinct One, Letter "T", "Taylor, Mark, Presser, Scottsboro", looks kinder like mine. Similar to this. That may be mine. It looks like mine; it has been a good while since I wrote in this book. Yes, I wrote "Scottsboro" nearly alike all the time. They are about the same. It may be my writing. Up until the time that the jury commission that Mr. Moody was on took office, nobody wrote in this book but I. These names (indicating) are all in my writing. Commencing with 1927 to 1931, nobody wrote in the book but I; not that I know of. I didn't keep the book.

The following then occurred:

Q. Will you kindly write on this same sheet for us, "Rudder, Cam, Merchant". A. Yes, sir.

Q. Is that your writing (indicating in book)? A. It looks like it.

Q. Can't you be more definite than that, is that your writing? A. The last time I used that book, I think I wrote with green ink.

Q. Is that your writing? A. I think it is. I wouldn't swear to it. It has been several years since I wrote in this book.

Q. Is that the best you can say? A. Yes, sir.

A. As far as I know, that is my writing, it looks like it.

Mr. Knight: What page is that?

Mr. Leibowitz: Page "R", precinct 3.

Q. Turn now to page "P", in the same precinct, page No. 3, I call your attention to these names, beginning with John P. Payne, farmer, Stevenson, is that name in your writing? A. No, sir.

Q. Who wrote that name? A. I don't know.

Q. Thomas E. Parks, is that your writing? A. No, sir. This is my writing, the notation of him serving.

Q. Parton, Claiborn, is that your writing there in green ink showing that Mr. Parton served? A. Yes, sir, he served before I went in, and I posted his card, this one.

Q. (By the court:) Which is your writing? A. These two, they served in the court before I took office. This one and this one looks like my handwriting. It has black ink. The cards were in the Clerk's office when I went in.

Q. That indicates that his name went in the box? A. No, sir, he had served on the jury and was out of the box.

Q. (By the court:) What is the date of that? A. The Fall of 1928.

Q. (By the court:) Would that indicate that his name was on there? A. Yes, sir.

Q. (By the court:) Have you any independent recollection whether his name was there when you wrote that? A. No, sir.

Q. The name is on the left side of the page, and the next column is his occupation? A. Yes, sir.

Q. And it recites here under the heading "Empanelled", if a man had actually been drawn and served as a juryman, you put in that column, the fact that he has served and in what court? A. Yes, sir.

Q. If a man is not drawn, although his name is in the jury box, his name would be in the left column, but would not necessarily have a notation on the right? A. That's right.

Q. Here's Cam Rudder's name again under the letter "J",—he is listed both under "J" and under "R"? A. That is probably some clerical error.

Q. Is that in your writing? A. Something similar; looks like it, yes, sir.

Q. General Knight called attention to Bain F. Mitchell, a white man, is that your writing there, "Bain F. Mitchell"? A. Yes, sir.

Q. That is your writing, no doubt about that? A. I think that is my writing.

Q. Will you turn to Precinct No. 10, and come to Snodgrass, will you write on this sheet also, write it as it is here "Snodgrass, K. D." A. Here it is.

Q. Is that your writing? A. It looks like it.

Q. Can you look at it and tell us definitely? A. That is the way I make most of my "D's".

Q. Turn to precinct No. 14, and come to the letter "L", Ples Larkin, please write Ples Larkin? A. "Larkin" first or "Ples".

Q. "Larkin" first, and then "Ples". A. All right, here it is.

Q. That is your writing? A. I think it is. It looks like it.

Q. All these names I have asked you about thus far,

are on the bottom line, immediately above the red lines? A. I guess so; I haven't paid any attention to it.

Q. Daisy Clemons, Farmer, in Precinct 21, will you write that name for us? A. Yes, sir (does so).

Q. Is that your writing there? A. Yes, sir, I think it is.

Q. (By Mr. Knight:) Is that your writing there, "Garland"? A. Yes, sir.

Q. Now, just write this name for us, "Moseley Travis"? A. Yes, sir (does so).

Q. Is that your writing there? A. It don't look as much like mine as the rest of them; it may be though. I wouldn't swear that it is.

Q. Suppose you do this for us, write this (indicating) several times? A. Yes, sir (does so).

Q. Please write this for us, Hugh Sanford, precinct 21, under the letter "S", "Sanford, Hugh, Janitor". A. Yes, sir (does so).

Q. Is that your writing? A. I think it is.

The witness further testified: When I went out of office I turned the books over to the probate judge's office and put them on top of some other books. These last names were written in green ink. I had green ink in my pen. Then my connection with the books ceased. I didn't put any of these red lines in here at no time. When I finished with those books there were no red lines that I know of. I don't know any thing about the red lines at all. Those names that I saw immediately above the red lines were in my handwriting. The names that we wrote on the book, the last ones, were written the last time we were in session and I didn't have anything to do with the books after that. After I left the office I haven't seen the books. I think I looked at the minutes last year. I did not write anything on the jury rolls since Mr. Moody became one of the commissioners.

Cross Examination:

When I was clerk of the jury commission of Jackson County, I compiled a list of the male citizens of Jack-

son County between the ages of 21 and 65 years without regard to their status or qualifications. We made a list on other paper, and then the commissioners looked through that list and compiled a list of the male citizens, to go on the jury roll. We selected names from that list that went on the jury roll. That list included all of the male citizens of the county, the list that we got. We selected these names without regard to race or color. We took the list that the board of registers used, the legal voters of the county, we took the Assessor's books of the county, and probably a telephone directory. The legal voters' list gotten out and certified to by the probate judge, I believe that is the three lists we had. With respect to that temporary list, we did not put names on there that we happened to know. We took them from these lists. It was from these lists that the jury commission prepared the jury roll of Jackson County.

Re-direct Examination:

Three lists were the only lists that we used, in the compiling of the temporary list, from which we eventually got this jury roll, the assessor's list contains only the names of people that own property. The next list I spoke of was the list of qualified voters certified by the probate judge. So that, if a man's name were not on either one of these three lists, his name would not appear on the temporary list. That is the only three lists we used; so far as I remember that is all we used. I don't know if these three lists that were used in compiling the temporary list from which the jury roll was eventually formulated, contain the names of all persons,—all males,—between 21 and 65. We examined the poll tax list of the county.

MR. C. A. WANN, recalled to continue his testimony.

Re-direct Examination:

The witness examined the roll, Precincts 30 to 39. Testified that all the names he knew were those of white

persons. There is one negro in the whole list, Hugh Sanford, at Scottsboro, that I know.

HAMLIN CALDWELL, being duly sworn on behalf of defendants, testified:

Direct Examination:

I live at Scottsboro and am Court Reporter for the 9th Judicial Circuit. Jackson is one of the counties of the circuit. I have lived in Jackson County twenty-four years. I haven't missed a session in Jackson County for twenty-four years. I have never seen a colored man on the grand jury in Jackson County. I do not know a great many people in Jackson County. I can go through the books and tell you the names I know. In a great many instances I know the name, but I don't know the individual.

The witness examined the books page by page and testified all the names he knew were those of white persons, except Travis Mosely and Hugh Sanford who are negroes.

There was no cross examination.

J. E. MOODY, recalled to complete examination.

Direct Examination Continued:

All the writing below the red lines was written there, either by me or my clerk or one of the commissioners. After the red line was put there, it was written in. I did that writing. The red line was there when I wrote it, according to my recollection. This date, 3/20/31, Precinct 16, letter "H", looks like my writing, either mine or Snodgrass. When it was written there, I think, the

red line was there on the page. I can't be positive about that, because I don't remember, but I think it was. I wouldn't say that it was or not.

This witness examined the book and in Precinct 21, letter S. He testified: I know Clem Shelton, John C. Shook, John Ashford, Dave Seabolt, Louis N. Sebring, Tyson M. Sloan, J. Clyde Spivey, Frank Shelly, Edward C. Snodgrass, Stewart Hunts, Eli B. Sanders, Thomas E. Smith, J. Pontiff Skelton, Claude E. Spivey, James D. Snodgrass, Jr., C. William Shipp, Tyson M. Sloan, John Shubert, Hugh Swain, L. E. Skidmore, Tom M. Sloan, John L. Staples, Ed. Snodgrass, J. Exom Summer, Cap Sisk, Sam Swafford, Robert Shook, John C. Shook, all white, and Hugh Sanford,—he is a negro. That last name is in Kelly Morgan's writing in judgment. He is a colored man, a negro. The last name before the red line. There is a John Staples, a colored man in Jackson County. That isn't his name right there (indicating), John L. Staples is a white man.

The witness expressed the opinion that Kelly Morgan had written most of the names about which he was questioned.

Cross Examination:

I was appointed jury commissioner by Governor Miller in 1931 and have served continuously on the board. The law requires that I elect a clerk of my board. I have elected a clerk of my board of jury commissioners. He prepared a list of the male citizens of the county between the ages of 21 and 65

Re-direct Examination:

All these names that I have announced are white men, excepting where they were pointed out as colored men. There was one man on there that you said was colored, in the Stevenson precinct, that I know as a white man, you said his name was Rudder, Cam Rudder. I don't know Cam Rudder.

J. H. STEWART, sworn in behalf of petitioners (defendants), testified:

Direct Examination:

I resided in Scottsboro and have resided there practically all of my life. I am forty-eight years old. My business is farming, except I worked as Rural Carrier from 1909 to 1919. I was on the jury commission, I think, from 1928 to 1930. I think I met with them three times, in 1928, 1929 and 1930. That was prior to the administration of Mr. Moody. Our clerk was Mr. Kelly Morgan. The members of our jury commission at that time, were myself and Mr. Stewart. The first session was with me and Mr. Wheeler in 1928, and W. P. Jenkins. That was my first experience as a Jury commissioner. Prior to that time I had attended court in Jackson County, Alabama mighty few times. I did not observe the trial of criminal cases unless they had a big murder trial, or something like that, I didn't go. I have seen a grand jury report. I have seen them go in and out of the courthouse. That is, before I became a jury commissioner, over a period of a good many years, I can't say how many, at least ten or fifteen years. I have never noticed a negro on a grand jury in Jackson County.

Q. It would have been an unusual sight, wouldn't it? A. I guess so, I don't know.

I took office some time in 1928, right after the Governor's inauguration in the early part of the year, I think; I am not sure. The meeting of the jury commission was held in the court house. I took the oath of office administered by the probate judge, Judge Bogart. Mr. Morgan was our secretary and he took the minutes. He was the man who was authorized to place in this book the names of citizens who were to go on the jury roll. He done all the writing on our books, including the jury roll. I don't think Mr. Morgan had any authority to write any names on these books other than those I instructed him to write on there. I don't know whether he did or not.

The following then occurred:

Q. Did you give him any authority to write names thereon, other than those you and your fellow commissioners instructed him to enter? A. I don't know that there was anything said about that. I didn't give him any instructions.

Q. Did the other commissioners give him such instructions in your presence? A. I can't say.

Q. In your presence? A. None that I know of.

Q. All of the names in these books were names that either you or your fellow commissioners, Mr. Wheeler and Mr. Jenkins, instructed Mr. Kelly Morgan to enter on these rolls, that's right, isn't it? A. Yes, sir, I think it is.

The witness further testified:

I did not prepare a list having all the names that I was going to propose to the jury commissioners to put on the jury roll as a jury commissioner. I might have suggested names on this list. I don't know whether I did submit any names at the first meeting of the jury commissioners, names to be entered on the jury roll, by virtue of my authority as a jury commissioner. I don't remember. There is no way for me to refresh my recollection about that. That has been four or five years ago, and I have paid no attention to that. I don't remember if either of the other commissioners suggested any names to be entered upon this jury roll. The commission consisting of three men as commissioners, did not vote on each of the names, as to whether or not that name should go on the jury roll. The procedure that we followed in putting a man's name on the jury roll, was: Mr. Morgan prepared a list. The list was there, and maybe more than one list. Mr. Morgan prepared one or more lists. Mr. Morgan was appointed clerk at the first meeting of the jury commission. He did not have that with him then and there before we appointed him, a prepared list. He prepared a list then and there. At the first

meeting of the jury commission he sat down and prepared a list in my presence. He prepared the list while I was present. We usually held over from eight to ten days, successive days. He was at work on it over several parts of days, successively. I can't tell what day we did put names on the books. We commenced after we had gone through the list and got what was qualified as jurors. The lists were those that Mr. Morgan prepared. I know where he took these lists from. He got them from the polling list and the tax books. I am not sure we had the tax books before us at the time we made up these lists; I don't remember. I don't remember what we did; we got these names from the registration list and the polling list. The registration list is a list of the voters. That is one of the requirements before they can vote; they have to be registered. These three sources were partly the ones from which we obtained these lists. I don't remember the other sources now. I have forgotten. All that I did in connection with my duties, was to take the list submitted to me by Mr. Kelly Morgan, and cull from that list such names as I finally placed on the jury roll. That's about all as far as I remember. It's been so long ago that I don't remember now. That is my best memory.

The following then occurred:

Q. Do you know a negro by the name of Mark Taylor, a presser? A. Yes, sir.

Q. Do you know whether his name was put on the jury roll? A. I don't know whether it was or not. I have forgotten.

Q. Did the name of Mark Taylor ever come up before you? A. I don't know whether it did or not, I have forgotten.

Q. If the name of Mark Taylor is on that jury roll, if there has been no forgery or crime committed, his name would have been put on that jury roll by your order?

Q. Do you know a negro named Cam Rudder at Stevenson? A. I don't believe I do. I can't recall it if I do.

Q. Do you know a negro named K. D. Snodgrass at Hollywood? A. Yes, sir.

Q. Do you know him personally? A. Yes, sir.

Q. Would you say that he is qualified as a juryman? A. I don't know.

Q. I will go to this name K. D. Snodgrass, is he qualified to serve on a jury? A. If we put him on that roll he was qualified. I don't know whether we did or not. I don't recall putting him on there.

Q. There is Mr. Snodgrass' names right there, precinct No. 10, Letter "S", do you say that he is a qualified juror?

Court: You needn't answer that.

Mr. Leibowitz: We reserve an exception.

Q. Do you know Ples Larkin of Larkinsville? A. No, sir.

Q. Do you know Travis Mosely of Scottsboro? A. No, sir.

Q. You live in Scottsboro? A. Yes, sir.

Q. Do you know Hugh Samford, Janitor, a colored man, a janitor at Scottsboro? A. Yes, sir.

Q. Known him a long time? A. I can't say how long I have known him. I know him.

Q. What qualifications did you impose on the names you did put on the jury roll? A. A man had to be honest; he had to be esteemed in the community in which he lived for his integrity and good character and be a man of sound judgment.

Q. Is that all? A. We had the law there before us.

Mr. Leibowitz: We move to strike the answer. Sustained.

Q. Is that all? A. I have forgotten all that law, I don't know.

Mr. Leibowitz: We move to strike that out. Overruled.

Q. Now these people whose names are on this jury roll, are not personally known to you are they? A. No, sir, not all of them.

Q. Did you pass upon each particular name at your meeting, take up a name and vote on it? A. No, sir, I don't remember. I wouldn't say.

Q. You don't remember what the procedure was at all? A. No, sir, not all.

Cross-Examination:

I was appointed by Governor Graves as a member of the Jury Commission. I assumed office in 1928. 1928, I think was the time. I was a member of the jury commission that compiled the jury roll, the roll of jurors of Jackson County, from which roll, a grand jury of Jackson County was selected which returned indictments during the month of March, 1931. August 18th, 1930 was the last time I saw these books or the jury box. That is when we filled the jury box the last time before I went out of office. After I left office, I left this jury roll here, and until somebody changed that, that was the jury roll from which juries were drawn.

The following then occurred:

Q. Did he submit to you such a list? A. He made out a list.

Q. So far as you know, or were able to ascertain, did that contain names of the male citizens between the ages of 21 and 65 years?

Mr. Leibowitz: We object to that. Overruled.
Mr. Leibowitz: We reserve an exception.

Q. So far as you know, did the list that Mr. Morgan prepared contain the names of the male citizens of Jackson County?

The Court: Subject to jury duty?

A. I would think so. It would be almost impossible to get the names of all the male citizens without taking a census, and we didn't have the census papers.

Q. So far as you know did that list incude white and colored persons?

Mr. Leibowitz: We object to that.

Court: If he knows, he can say.

A. I don't know.

Q. Do you know whether or not the list that Mr. Morgan submitted to you contained both white and colored persons?

Court: Do you know whether it did or not?

A. I wouldn't say.

Q. Did you examine that list submitted to you by Mr. Morgan? A. Some, yes, sir.

Q. I will ask you this question, did you put on that roll from the list submitted to you the names of all male citizens between the ages of 21 and 65, regardless of race or color, whom you thought possessed the qualifications of jurors?

Mr. Leibowitz: We object to that. If he is permitted to ask that, I have a right to examine specifically. I submit that is an improper question.

The Court: I believe I'll overrule the objection.

Mr. Liebowitz: We reserve an exception.

A. Mr. Morgan made out that list—

The Court: I think I can shorten this whole business. Mr. Stewart, you had various lists or data before you?

Witness: Sure.

Court: Containing names?

Witness: Yes, sir.

Court: Now, did you know all of these men?

Witness: No, sir.

Court: You didn't know them all?

Witness: No.

Court: Now then, did you leave off any man, or did you instruct Mr. Morgan, the clerk, or did the jury commission who sat in your presence, and with you,—did the jury commission or you ever instruct Mr. Morgan, the clerk of the jury commission, to exclude any person from the roll of jurors for Jackson County, on account of his race or color?

Mr. Leibowitz: We object to the court asking the question.

Court: The objection is overruled.

Mr. Leibowitz: We respectfully except.

Witness: That was never discussed, race or color was never discussed, neither was religion, political connections, fraternal connections, and the like of that was never mentioned at all.

Q. Can you state whether or not that jury roll contains the names,—the jury roll prepared by your commission,—contains the names of white or colored persons, that is whether it contains the names of any colored persons?

Mr. Leibowitz: We object to that.

Court: You are speaking of these rolls here?

Mr. Knight: Yes, sir.

Court: I'll let him answer if he knows.

A. I don't personally know all of the names on the book.

Q. That isn't responsive; that isn't an answer, he has been asked whether or not names of colored persons were on the jury roll?

Court: Do you know whether there is or not?

A. No, sir, I don't know whether there is or not.

Court: I want to ask him again, and you both can object if you want to, then we will forget it. When you discussed this preliminary list and data you are talking about having before you, when deciding to put names on this jury roll, do you recall whether or not the name of any colored voter was discussed and his qualifications, and whether or not after discussing him, his name was not put on the jury roll?

Witnesa: No, sir, I have forgotten.

Court: Or was put on the roll?

Witness: I don't know whether there was or wasn't.

Court: You just don't remember?

Witness: No, sir.

Court: Do you recall any discussion while the board was in session about whether you would put the names of colored people on the roll, or keep them off?

Witness: That wasn't discussed among us, the best I remember. We didn't automatically or systematically exclude anybody.

Mr. Leibowitz: We move to strike that out as not being responsive.

Court: I reckon in a way it is responsive, I will let it stand.

Mr. Leibowitz: We reserve an exception.

Q. You considered every man on the list submitted to you by Mr. Morgan? A. The Board did, the best I remember, yes, sir.

Re-direct Examination:

Q. Did you strike any names off the list? In other words Mr. Morgan came in with the list, and recommended this man, or "We don't want this man", or did any of the commissioners say that? A. You mean off the temporary list?

Q. Yes, sir. A. I think so.

Q. In many instances? A. Well, I can't tell about that. I guess we did, but it has been a long time ago, and I paid no particular attention to it.

Q. You said in answer to his Honor's question, that the question of a man being colored wasn't discussed,—in other words no mention was made of that? A. That is my recollection.

Q. Did you have in mind at that time, when you became a jury commissioner, that in all the years you had been a resident of Jackson County, you had never seen a colored man serve on either a grand or petit jury?

Court: You needn't answer that question.

Mr. Leibowitz: We want to respectfully except.

Q. Did you, yourself, have brought before you, at any time, either you, or you and the other commissioners, any colored person in Jackson County for the purpose of inquiring into his qualifications as a juror,—did you, yes or no? A. I don't think so, as far as I know. I don't remember it if we did.

Q. (By the court:) Did you put, or did you direct the name of any one put on this roll, did the board know whether or not the name,—the person,—was white or black in every instance,—in other words did you know the names and know the men that went into that roll? A. I didn't know them all, no, sir.

Q. Had it been a custom in Jackson County for many years prior to the time when you became a member of the jury commission, for negroes not to serve on the juries? A. I don't know what the custom was.

Q. You know what your experience had been, do you not?

Court: He has testified to that.

Mr. Leibowitz: What?

Court: That he lived in Scottsboro and had never seen a negro serve on a jury. He answered that at the beginning.

Q. Did you not, by reason of the fact that you had never seen a negro on a jury, did you not have that in

mind that it was customary,—when you assumed office as a jury commissioner,—not to select any negroes on the jury roll which you were to prepare?

Court: You needn't answer that question.
Mr. Leibowitz: We except. That's all.

Re-cross Examination:

Q. He asked you if you ever summoned any negro and questioned him as to his qualifications as to jury service, did you ever summon any white men and bring them before you and examine them as to their qualifications as to jury service? A. The ones we put on there?

Q. (By the court:) He wants to know if you brought these folks before you and examined them? A. No, sir.

Re-direct Examination by Mr. Leibowitz:

Q. Did you ever inquire from any negro living in a negro section of the various communities, making up Jackson County, if there are such communities,—did you ever inquire from anybody in such community as to whether or not there were any negroes in those communities that had the qualifications that the commissioners were looking for,—did you ever make such inquiry? A. I didn't personally myself.

Q. Do you know of anybody that did, yes or no? A. No, I don't know.

Q. Is there any negro community in Scottsboro? A. They are scattered all over town.

Q. Is there any town in Jackson County with a negro community, where there is a negro section? A. I don't know.

Q. Do you know of anybody connected with that jury commission that made independent investigation among the negroes to ascertain whether or not any of them were qualified as jurors? A. I didn't myself. I don't know what the rest of them did.

Q. (By the court:) Are you pretty well acquainted all over that country? A. Well, I don't know that I am.

Q. Do you know many negroes there? A. There is several negroes there, I don't remember what the census was. Take south of the river there is practially no negroes living in there.

Q. How about north of the river? A. Along the railroad there is several negroes, at Scottsboro, Hollywood, Stevenson and Fabler.

Q. Now, among these negroes that you know, and have known for many years, is there one negro that you know that is qualified as a juror, and was so qualified when you assumed office in 1928? A. I don't know.

Q. Can you state the name of any negro that you know—

Court: He has answered that question. Ask him something else if you want to.

Q. Let me put the question, name one negro who you would say is qualified to have his name on the jury roll?

Court: You needn't answer that question. He has already said that he didn't know. When he don't know he don't know. (To witness:) You can stand aside. (To Mr. Liebowitz:) You can have an exception.

Q. Just a minute, Judge: What I had in mind was this, Mr. Commissioner, you say that you have known for a number of years, certain individual negroes, is that right? A. Yes, sir.

Q. I dare say if you took time to think about it, you could name some of them,—I won't press you on that,—having these negroes in mind, can you tell us the name of one negro whom you are prepared to say met the qualifications imposed by law, at the time you were jury commissioner, can you mention any such? A. I don't know.

Defendants' Counsel then stated: In addition to the original grounds set forth in the motion to quash, heretofore referred to, we would like to add another ground, and that is this: that the indictment was found by a

grand jury that was drawn from a jury roll in which there was fraud in the compiling thereof; that there was fraud in compiling the list from which the said grand jury is purported to have been drawn, therefore such indictment is null and void. That is an added ground that we would like to add to the grounds mentioned in the papers. The State again denied each and every allegation of the motion to quash the indictment.

Defendants, then offered in evidence, the testimony on the former trial, before Judge Horton, on the same motion to quash the indictment. It was agreed between counsel for defense and the State that only the evidence was offered and Judge Horton's rulings were not presented for review. And this evidence was read to the court and was in words and figures as follows:

The affidavit of Marie B. Owen, Director of the State Department of Archives and History, was offered as follows:

State of Alabama,
Montgomery County, } ss.:

I, Mrs. Marie B. Owen, Director of the Alabama State Department of Archives and History, do hereby certify that said department is designated as an official depository for all government documents, including the reports of the United States Census Bureau, and further certify that the 15th Census of the United States—1930, Population Volume 111—Part 1, Reports by States—Alabama—Missouri, Composition and Characteristics for Counties, Cities and Townships, on file and of record in said Department, at the Capitol, in the City of Montgomery, pages 130 and 135, respectively, discloses the following information:

> Jackson County—Total population, 36,881; Males, 18,801; Females, 18,080; Color White, 34,192; Color Negro, 2688.

Morgan County—Total population, 46,176; Males, 23,122; Females, 23,054; Color White, 37,865; Color Negro, 8,311.

(Signed) MARIE B. OWEN,
Director, Alabama State Department
of Archives and History.

Subscribed and sworn to before me this
the 22nd day of March, 1933.

(Signed) Mrs. Voncile B. Sayers,
Notary Public,
Montgomery County, Ala.

STATE OF ALABAMA,

Department of State.

I, Pete B. Jarman, Jr., Secretary of State, of the State of Alabama, having custody of the Great and Principal Seal of said State, do hereby certify that, as disclosed by the records of this office, Mrs. Voncile B. Sayers was, on October 22, 1932, duly commissioned as a Notary Public in and for the County of Montgomery for a term of four years. I further certify that by virtue of such appointment she is authorized by law to administer oaths, take acknowledgments and proofs of instrument in writing, and I further certify that her signature to the instrument hereto attached is, to the best of my knowledge, information and belief genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State,
(Seal) at the Capitol, in the City of Montgomery, this 22nd day of March, One Thousand Nine Hundred and Thirty-three.

(Signed) PETE B. JARMAN, Jr.,
Secretary of State.

J. S. BENSON, witness called on behalf of the defense, after being first duly sworn, testified as follows:

Direct Examination:

I am in the newspaper business. I live in Scottsboro, in Jackson County, State of Alabama. I have lived in Scottsboro about fourteen years, in the county about thirty-five years. I followed the Court proceedings at Scottsboro with regularity as editor of the Progressive Age. During all of the years I have lived in Scottsboro and Jackson County, and in the courts I have never known of one single instance where any negroes were put on the jury roll, or on the roll from which the Grand Jury was drawn, or from which the Petit Jury was drawn. I never heard of it or never noticed one. Well they haven't called them.

Counsel for the defendants asked the witness the following question:

Q. Has it been the practice, has it been the uniform practice?

The State objected, that it is clearly a conclusion of the witness. The Court sustained the objection and defendants' counsel excepted.

The witness further testified:

I know some of the persons that were in authority to draw the juries in the years 1930 and 1931. I think Mr. Jeff Moody was chairman of it, and I don't know but I think Mr. Rush is one of them, and there is one other I don't know. I never talked to Mr. Jeff Moody about the jury question. I never talked with them any pertaining to negroes serving on juries, being put on jury rolls. I never heard it much. I never discussed it with either of them. I have with me a census of Jackson County. The total population is 36,881; you want the

population, all over twenty-one years old, 8,801; 666 negroes, just male. The male population over twenty-one was approximately 8,801; 8,136 whites.

Cross Examination:

I am the editor of the Progressive Age. I never served as a jury commissioner for Jackson County or had anything to do with the making of the jury rolls for Jackson County. I had nothing to do with selecting the people who were qualified to serve as jurors in Jackson County. I never served as a jury commissioner when they were selected. I never saw, nor do I know, nor can I tell whether or not there are negroes in that jury box now or not. I do not know as a matter of fact, within my own knowledge, whether or not there are negroes in the jury box and in March, 1931, there were not any negroes in the jury box of my own knowledge. I have not been to Mr. Chamlee's office in Chattanooga. I haven't been to Chattanooga to confer with Mr. Chamlee. I have never seen Mr. Chamlee in the office. I was with him at the time of the motion for a change of venue. I was getting some news items that is all.

Re-direct Examination:

I know General Chamlee. I never heard of any other human being in the State of Alabama who I ever talked to who ever knew of one single negro who ever served on any jury or as getting any call for jury duty.

Re-cross Examination:

The following then occurred:

Q. Do you know of any negroes in Jackson County qualified to sit on a jury?

Mr. Leibowitz: I object to that question because it is calling for a conclusion of the witness.

Court: Sustain the objection.

Attorney Genral Knight: Here is a man who has given us the census. Here is a man who has testified he hasn't seen negroes on juries in Jackson County, and now I ask him if he knows of any that possess the qualifications.

Court: You haven't shown he knows the qualifications.

Attorney General Knight: "The Jury Commission shall place"—these are the qualifications of the jurors. The jury commission shall place on the jury roll and in the jury box the names of all male citizens of the county who are generally reputed to be honest and intelligent men, and are esteemed in the community for their integrity, good character, and sound judgment, but no person may be selected who is under twenty-one or over sixty-five years of age, or who is a habitual drunkard, or, who, being afflicted with a permanent disease or physical weakness is unfit to discharge the duties of a juror, or who cannot read English, or who has ever been convicted of any offense involving moral turpitude. If a person cannot read English and has all the other qualifications prescribed herein and is a freeholder or householder, his name may be placed on the jury roll and in the jury box." Do you know of any negroes in Jackson County possessing those qualifications.

Mr. Leibowitz: We object. There is no evidence here your Honor that Mr. Benson was ever charged with the duty of examining any of the colored people as a jury commissioner.

Court: Overrule the objection.

A. I know some good negroes as far as negroes go.

Q. Do you know of any that possess the qualifications prescribed by the statute I just read you?

Mr. Leibowitz: Same objection.

Court: Overrule the objection.

A. I think that sound judgment would get it, I think that sound judgment part, there are some negroes with good reputation there, just as good as anywhere.

Q. The question of their judgment? A. I don't think there are.

Re-direct Examination:

I don't know every negro in Jackson County, nearly all of them I suppose. They have no doctors in the entire Jackson County, not a doctor. I know some ministers. I would not say his judgment is as sound as the average citizen of the community. I base my opinion on so far as sound judgment. I don't think they have been trained and have studied that proposition, I might say the same thing about women, I don't think they have been trained for it; the negroes I know haven't been trained for jury duty in our county there, and I don't think their judgment—you could depend on it all together, you might depend on it in some cases but they haven't made any study of jury duty and law and equity and justice and so forth, that is just my opinion.

The following then occurred:

Q. Would you say a man who is illiterate, and could not read and write English, and had never gone to school, would you say his judgment is any less sound—

Attorney General Knight: I object.

Q. Would you say his judgment is less sound than a man who has gone through a divinity college?

Attorney General Knight: I object.

A. We haven't a divinity.

Court: Sustain the objection.
Mr. Leibowitz: I except.

The witness testified further: I don't believe there are any negroes in our country that I would risk on a case where I was interested in it, where there is any law and justice and so forth. We have no divinity students up there—that is colored. We have a minister there. I don't know whether he is a doctor of divinity, just a common negro preacher, they fill their place honorably and all of that. They have studied the gospel, I suppose. Some of them has got education enough. But, as a matter of fact, I think they wouldn't have the character. I mean they wouldn't be honest. They will nearly all steal. I know some of them that wouldn't. I wouldn't exclude any of them. I am talking about negro ministers. Some of them will steal. I know one or two that wouldn't steal. I don't know whether I could call any right now. There are negro merchants in Jackson County. I believe Bud Moore is one. He has a little store there, I don't know, there is one or two little merchants at Stevenson, that is all I know. Bud Moore is a pretty good negro. I don't know whether he is honest. I have never caught him stealing. I would give him the benefit of the doubt. That Bud Moore, he is a reputable man, I think. I don't know whether he knows me or not. I know him. Just passing around, he has the reputation of being honest. I never discussed questions of natural affairs, or state affairs, or public questions, with him. I never talked with him on public affairs except at public meetings, or something like that, where we all met in clean-up campaigns, or something like that, and might have heard him say something. He just followed what we told him to do. I know of my knowledge Bud Moore isn't a man of good sound judgment and intelligence and doesn't come within the qualifications of that statute; he isn't as a juror. I don't know whether he is a man of sound judgment. I am excluding Bud Moore from that category. As a juror, I don't know much about Bud Moore.

The following then occurred:

Q. So far as you know Bud Moore may be perfectly qualified under that statute to serve as a juror, yes or no? A. No.

Q. You don't know.

Attorney General Knight: He said no, he didn't say he didn't know.

Q. He wouldn't be qualified because he is a negro, isn't that so, yes or no? A. Because he isn't trained.

Q. What do you mean by trained? A. He never studied and made it his life.

Q. How many men have you ever known in Jackson County that ever studied to be jurors?

Attorney General Knight: We object.

Court: Sustain the objection.

Mr. Leibowitz: I except.

The witness further testified:

I mean studied justice and such as that. They talk it at the cross roads store, and talk it everywhere, and go to Court and fill the Court House. I mean white people. I see negroes in this court room. I have seen them at Scottsboro, negroes in the Court House. I have heard them talking about cases in the Court House.

That fellow A. Joseph has been a merchant up there. I wouldn't say he is now or not. He used to be for several years. He lived in Stevenson about forty-five years. He is a family man and a preacher too. I don't know if he is an honest man. I wouldn't say he is dishonest. I have talked to him a little. I think he has been in my office about getting minutes or something that way printed, something like that. I could be mistaken about him being the man. I just spoke to him and he answered my questions intelligently. I don't think there is anything wrong with his mentality. And he has sober judgment in some things. I have never seen him drunk.

I don't know that he is suffering from any venereal disease or permanent disease that might affect his mentality. He was a man of good reputation under sixty-five in the years 1930 and 1931. I am pretty sure that he was. I don't think he was a tax payer, but he had a family. I never heard of him being convicted of any crime. I don't think he would know anything about jury duty. I don't think he would make a good juror. I don't know any other merchants—I know some of them fellows that come in. I know no colored doctors in Jackson County, never was one there, there was a quack doctor there but we put him in jail. I do not know any real good legitimate negro doctors. There are no negro lawyers there.

I know negroes in Jackson County that own real estate. I think that fellow Stapler does. I know him. Speak to him about different matters. He answered my questions pretty intelligently. I imagine he is over sixty-five years old. I would knock him out. Not altogether just because he is a negro, that is partly it. The fact is, he is a negro and hasn't had that training, about his judgment being good.

The following then occurred:

Q. Mr. Benson, would you say this man here that owns real estate has had as much training—I want to know whether this man you just referred to, this negro, who is a real estate owner, and which you have talked to, whether he has had just as much training for jury duty as the man who was first called to serve on his first jury? A. No, sir, he hasn't, I never served on any jury in my life.

Q. Your business takes you into court as a newspaper man? A. Yes, sir.

Q. Wouldn't that apply to the average body of citizens? A. No, sir, a good many never served on a jury but they have studied and make good jurors.

Q. You have seen jurors who have never served on juries and who have never been in court rooms before?

Attorney General Knight: I object.
Court: Sustain the objection.
Mr. Leibowitz: I except.

The witness further testified: I think that man Timberlake, he has some property. He is a man of good reputation. A decent citizen and law abiding. I think he is about sixty-five. I have never known him to be drunk; never seen him drunk. I never heard he has had the reputation of being a drunkard. As far as I know he is well thought of in the community in which he lives. A man of sound judgment in the community, as standards go there among the negroes. I will exclude him too.

The following then occurred:

Q. Simply because he never served on a jury and never had experience at jury duty?

Court: I don't think that would be a proper question.
Mr. Leibowitz: I except.

Q. On what basis do you exclude him. A. Well sound judgment.

Attorney General Knight: We object.
(No ruling.)

Q. Have you ever tested his judgment, yes or no? A. (No answer.)

Q. What is there about his judgment you find fault with, this particular man's judgment? A. I don't know him much.

Attorney General Knight: What Mr. Benson might find fault with a person's judgment is not the question, it is whether he is esteemed in the community.

Q. Do you know the definition of esteemed?

Court: I think the question should be confined to their qualifications as jurors.

Q. Speaking about his judgment, because the statute refers to his judgment, sound judgment, what is there about that man's sound judgment that you questioned? A. I don't know about that man.

Q. From what you know he may be a man of sound judgment, isn't that so? A. Oh, possibly he could be, but I don't think so.

Q. You wouldn't say one way or the other. A. About Timberlake, no.

Q. You wouldn't say about Timberlake that he wasn't qualified, under that statute the Attorney General read to you, to serve on a jury? A. I don't know much about Timberlake?

Q. You wouldn't say he wasn't qualified? A. I would say I wouldn't think he would be qualified.

Q. Because he is a negro?

Attorney General Knight: We object.

Q. I want to know why you say that?

Court: Ask him the question in regard to his qualifications.

Q. What is there about that man's sound judgment you complain of? A. I couldn't tell you.

Attorney General Knight: I object.
Court: Sustain the objection.
Mr. Leibowitz: I except.

The witness further testified: I don't know of any more that own property. I know some negroes in that County over twenty-one and under sixty-five. I know

Mark Taylor. I know him about as well as any. I have known him ten or twelve years. He is a dry cleaner there. Deals with people, people bring their clothes to his store and have them dry cleaned. He has the reputation of being a good cleaner. I don't know as I ever heard his honesty discussed. I never heard of him being arrested and convicted or ever being in jail. He is a pretty good negro. Nobody ever complained about his honesty. I never heard of his ever been charged with stealing. I think he is a married man. I don't think he has any children. He was living there when I went there, he has been there about fifteen or sixteen years. He can read and write. I do not know what education he has had. He came from up in your part of the county I think. He went to school there. He speaks pretty intelligently for a negro. You can tell the difference in the way they talk. I have talked to him about church of course, and such as that. He would ask me advice about things in the church over there. I am not a preacher; he would get me to help them out. He is a religious man and a man faithful to his church.

Re-cross Examination:

I don't know whether Moore, Joseph, Stapler and Timberlake are in the jury box. I never looked to see in the jury box in my life.

J. E. MOODY, witness called on behalf of the defense after first being duly sworn testified as follows:

Direct Examination:

I am a resident of Jackson County. President of the Jury Board. I had no official position in 1930 except a farmer. I was appointed March, 1932. I was not a jury commissioner in 1930, or had anything to do with the selection of jurors in 1931, nothing at all.

The following then occurred:

Q. Do you know Charles Morgan of Jackson County? A. Whereabouts does he live?

Q. He was on the Grand Jury that indicted these defendants, member of that Grand Jury. A. I know one Charles Morgan.

Q. Is he white? A. Yes, sir.

Q. Do you know H. H. Rogers? A. Where does he live?

Q. I don't know, he served on this Grand Jury, do you know him? A. I don't know as I do.

Q. Do you know J. H. Cox? A. I think so.

Attorney General Knight: We object. We have gotten to one of the questions that has been carefully decided by practically every case the gentleman read. He is calling a list of names, as I understand, of the Grand Jury, and attempting to prove they are white. The Courts have repeatedly held that a defendant is neither entitled to members of his race on a Grand Jury or Petit Jury. The only thing that this inquiry should be assigned to is a systematic exclusion of negroes from both.

Mr. Leibowitz: The Attorney General is quite right, I am not seeking to prove the point he is calling to the Court's attention, I am offering to prove this Grand Jury was all white, and will proceed from that that every man that was on the jury roll was white.

Attorney General Knight: Why prove that every man on the Grand Jury was white?

Mr. Leibowitz: Will you concede that?

Attorney General Knight: I don't concede anything.

Mr. Leibowitz: Let us prove it then.

The witness further testified:

I don't know G. W. Minton, George B. Phillips or William Rash. I don't know J. P. Brown by his initials.

I don't know Arthur Gamble, C. A. Mason or Nash Manning. J. M. Tidewell is a white man. I don't know A. E. Chambliss by his initials. I don't know John G. Hicks or Robert E. Hall. I know a Robert Hall, but I don't know whether it is Robert E. I don't know Raymond Hodges or C. D. Pole. J. M. Ragsdale is a white man. Walter Berry is white.

I was born and raised in Jackson County and am thirty-eight years old. I have never known of a single instance where a negro was called to serve as a juror in any case, civil or criminal, in Jackson County. I don't know anything about whether a negro was on any jury roll at any time in Jackson County, my duties started March, 1932. I prepared a jury roll. I was president of the board.

Defendants' counsel then asked the witness the following question:

Q. Is there a single negro on the jury roll that you prepared, yes or no?

The state objected. The Court sustained the objection and defendants' counsel excepted.

The witness testified further: I do not know who are the members of the board that served in the year 1930, that drew up the list from which the jurors and grand jurors were selected in 1931, who were the members of the board. I have been told who they were. The members of the jury board were Hunt Stewart of Scottsboro. Will Jenkins, and he is from Scottsboro. I don't recall the other names but Mr. Morgan was the Clerk.

Cross Examination:

I do not know A. B. Moore. I do not know A. B. Joseph. I don't know Moore by the name of A. B., but by the name Bud. I know the qualifications a juror is supposed to possess. I am a jury commissioner.

The following then occurred:

Q. Would you consider him qualified to serve as a juror?

Mr. Leibowitz: Let him state the qualifications.

Attorney General Knight: I will read them to him.

Mr. Leibowitz: I want to know how much he knows about the qualifications.

Attorney General Knight: He is your witness.

Mr. Leibowitz: I want to see if your Honor please, and I think in the interest of justice we should see how much this jury commissioner knows as to the qualifications of jurors.

Attorney General Knight: He is presumed to know the duties he is to perform.

Q. The question was did Bud Moore possess the qualifications of a juror in your opinion? A. No, sir.

Court: Overrule the objection.

Mr. Leibowitz: We except.

Mr. Leibowitz: Tell us what the qualifications are for a juror of Jackson County, recite them.

Attorney General Knight: I am examining the witness.

Mr. Leibowitz: I beg your pardon, I thought you were through.

The witness testified further:

The general reputation of Bud Moore is not esteemed in the community in which he resides as a man of sound judgment nor is he esteemed for his high character. I know L. C. Stapler at Limrock. He is a negro. He is not esteemed in the community in which he resides as a man of sound judgment nor is he esteemed for his high character. I do not know whether he is in the jury box. I do not know Timberlake.

Re-direct Examination:

I have not gone into the community where Stapler lives, I wouldn't call it a negro community, two or three negro families live there. I have known Cass Stapler for fifteen or eighteen years personally. I don't know as I have gone in the community to inquire what his reputation is, but I have heard outside the community.

The following then occurred:

Q. Can you recite to us what the law says about the qualifications of jurors?

Attorney General Knight: We object.
Court: Overrule the objection.

A. Well a man has got to have a good character.
Q. What is the matter with Timberlake's character?

Attorney General Knight: I object.
(No ruling.)

Q. Good character, go ahead? A. And got to be a man of good judgment, intelligent, honest, and not to be afflicted with any disease.
Q. What kind disease suppose he has, consumption? A. Contagious disease.
Q. Consumption is a contagious disease, would that disqualify him? A. I don't know.
Q. What does the law say with reference to disease?

Attorney General Knight: We object.
Court: Sustain the objection.

Q. Tell us the qualifications you would apply with reference to disease in excluding a man, when he has a disease, what kind of disease?

Attorney General Knight: I object.
Court: Sustain the objection.

Mr. Leibowitz: I except.

Q. Does a disease that is contagious and doesn't affect his mentality exclude a juror under the law? A. (No answer.)

Q. You don't know do you?

Court: Sustain the objection to that question.

Mr. Leibowitz: May I be heard on that? If I can show this jury commissioner doesn't know the qualifications in the selection of jurors, and he is the President of the Jury Board, isn't that going to affect your Honor as to whether there were any of these negroes that came within those rules or didn't. If I can show that he doesn't know.

Attorney General Knight: He has stated he didn't have a good reputation.

Mr. Leibowitz: I am speaking of disease.

Court: Sustain the objection to that.

Q. Suppose I told you, Mr. Moody, that no man is disqualified because he is diseased if his disease isn't permanent and tends to affect his mentality, is that something new to you?

Attorney General Knight: I object.

Court: Sustain the objection.

Mr. Leibowitz: I except.

Q. What other qualifications are there? A. He has to be over twenty-one and not over sixty-five, and be a house holder or a free holder.

Q. He has to be a house holder or a free holder? A. I think so.

Q. Suppose I told you the law is as to this—

Attorney General Knight: We object.

Court: Wait a minute.

Q. Suppose I told you the law doesn't require a man shall be a house holder or free holder, suppose I tell you only in cases where a man can not read English must he be a house holder or a free holder, would that change your statement?

Attorney General Knight. We object.
Court: Overrule the objection.

A. If I understand it, if a man can not read English it doesn't bar him from serving on a jury.

Q. Suppose he isn't a house holder or a free holder, would you still put him on your jury list, if he couldn't read English?

Attorney General Knight. We object.
Court: Sustain the objection.

Q. If he could not read English and was not a house holder or a free holder, would he be qualified to serve? A. If he couldn't read English and wasn't a house holder or free holder?

Q. Yes, sir. A. No, sir.

Q. Could he serve on a jury if he couldn't read English, if he was a free holder could he serve? A. If the other qualifications made him competent he could.

Attorney General Knight: That is right.
Mr. Leibowitz: We have some bleachers with some rooters in them.

Q. Do you know of any negroes at the present time on your jury roll—you made up the jury roll didn't you? A. Which roll?

Q. The jury roll from which— A. Since 1932.

Q. You made them up since 1932, and you don't know of any negroes on any jury roll you have made up?

Attorney General Knight: We object because that is illegal and immaterial.

Court: I think it would be prior to or up to that time, sustain the objection.

Mr. Leibowitz: I offer to prove not only prior to the trial, but since the trial, that the custom has been maintained, and I offer to prove it as a custom.

Court: I will let you prove it up to the time but not since the time.

Mr. Leibowitz: We except.

The witness further testified: I don't know Timberlake. I do know Mark Taylor. He is not a man of good character. I couldn't tell you if he has ever been convicted of any crime. I don't know if he has ever been charged with any crime. I know him—I have known him I guess about ten years. I have had business relations with him. Had my suit pressed.

Defendants' counsel then asked the witness the following questions:

Q. What is there about this negro that you say he isn't good enough to serve on the jury?

Attorney General Knight. We object.

Court: Overrule the objection.

A. Well, I always understood he was living in adultery with his wife before he married her.

Q. You don't know that of your own knowledge? A. General talk of the town.

Q. How long has he been married? A. I couldn't tell you.

Q. How long have you known him to live with his wife?

Court: I think you are extending it too far on his reputation.

Q. What else do you have against his character? A. I think that is enough.

The witness further testified: Besides that I have nothing to complain about, he has never stolen from me. I do not know of anybody else he has ever stolen from. That is why I would disqualify him for serving as a juror. Just on that basis. Simply because somebody said he had lived with his wife in adultery before he was married to her, that is the basis. That is the general talk of the town. That is his character. I would disqualify him on his character. I don't know if he is intelligent. I have never found him any other way but honest. He is over twenty-one and under sixty-five. I don't know of any disease he has such as affects his mentality, or any permanent disease.

I know L. C. Stapler. I have known him about fifteen years. He has been a farmer ever since I have known him. I don't know how old a man he is. I couldn't tell you if he is over twenty-one or under sixty-five. I have never had any business relations with him. I know where he lives. He lives at Limrock, Alabama. I know other people that know him. I have discussed him with other people. I couldn't say how long ago.

I know people that know Mr. Stapler in the community where he lives. Well, I don't know now what there is about his character I object to, but he has been living in adultery. I only know it from other people. Outside of that I couldn't tell you, I have been knowing him a long time.

Q. That is all you know about him, is that really your ob[illegible]ion to him?

I know C. S. Finley. I couldn't tell you what his business is. He lives at Scottsboro. I know him a long time. I know Travis Mozley. I think he is a porter on the Southern Railroad. I don't know about him being a Pullman porter. I don't know where he lives. I don't know much about him. I know Pleas Larkin. He hasn't got any business. I know Elisha Matthews at Scottsboro. I think he is working in a hardware store. Sweeps the floor and builds fires.

J. H. STEWART, witness called on behalf of the defense, after being first duly sworn, testified as follows:

Direct Examination:

I was on that jury commission in 1930. I do not know these men that were drawn, that served on the Grand Jury; Charles Morgan, H. Rogers, J. H. Cox, G. W. Minton, William Rash, Arthur Gamble, C. A. Mason, Rash Manning, John P. Hicks, Robert Hall, Raymond Hodges, C. D. Pole and Walter Berry. I don't know but one or two personally. I helped to select those names to make up the jury roll. We called in men from different parts, different precincts, and read the roll to them and he checks the names of the qualified jurors, he checks those names off of our roll. We take those people's word for it, the men who come in, the law gives us that right. The jury commission did check over these qualifications. I and the Jury Commissioners, we took those men that fit the statute. After the name of each citizen of Jackson County there is the word "col." written, to designate his color, for instance, John Jones, if he is a colored man there will be "col." I have seen names where it wasn't. You take the Tax Assessor's books, we were supposed—we could get the name from the Tax Assessor's books, or the City Directory, or Telephone Directory, anywhere we could get them. But, you take the Tax Assessor's books, maybe John Smith, it don't say whether he is colored or white. When he pays his taxes they take his money whether he is colored or white. But when they take him for jury duty the names are designated "col." when they are colored, if they are down there "col."

The following then occurred:

Q. Do you know of any negro, was there any negro on any list your commission prepared from which this Grand Jury was drawn, the name of any negro on that jury, yes or no? A. State the question.

Q. (Question read by the stenographer.) A. Yes, sir.

Q. Was there any negro on the jury roll from which the Grand Jury was drawn? A. Negroes on the list.

Q. What list? A. On the list these different parties we would call on.

Q. I ask you if there was any negro on the jury list from which this Grand Jury was drawn? A. I don't remember.

Q. Do you know of any? A. The names of negroes, the negroes names are on the voting list.

Q. I am not asking you about the voting list. A. On the jury roll?

Q. Speaking of the jury roll? A. The Clerk copied the jury roll from the voting list.

Mr. Leibowitz: I move to strike that out.
(No ruling.)

Q. Of your own knowledge do you know of any, as a member of the Jury Board, from which this jury was drawn, in the indictment of these negroes in these cases, do you know the name of any negro on that jury roll, were those names put in the box, do you know of anyone that was a negro, answer that yes or no? A. I know of some negroes names on there.

Q. Is that of your own knowledge? A. Yes, sir.

Q. When you make up this jury roll, is the list you make up the names of the people that serve on juries? A. We try to make a list of the male population.

The witness testified further: We make up a list of qualified and unqualified. We first make us out a list of all the names, all male citizens, and try to get them all, then, we call in different parties from different precincts of the county, men we absolutely know to be all right and show that to them, and they then check this list in their precinct where they are supposed to know all of these parties. There may be two or three in the same precinct. Then after we get all of these precincts covered, we take the names of those that are qualified

and the Clerk writes them on a card, the name and address and Post Office and occupation, and places them in the box. That box is sealed and opened only in the presence of the Court. I think the last time I served the best I remember there was six or seven hundred names, these were new jurymen. We just fill it once a year. I expect there was fifteen hundred or two thousand names in the box. I do not know the name of any negro in that box. I couldn't swear whether there was or wasn't because I didn't personally know all of these names. The list ought to be—it shows on the jury roll kept in the Probate Judge's office. It is a well bound book, every name in that book is certified to by me, as a member of the Jury Commission, and that is now in the Probate Judge's office supposed to be locked in the vault. Judge Mooney did not send that book with me.

Mr. Leibowitz stated: We asked for that book but Judge Mooney said he would send the book by somebody.

The witness testified further:

I don't know anything about it since 1930, August 18th is the last time I served, that is when we wound up the last time. Mr. Morgan came here with me from Scottsboro, he wasn't a commissioner, he was the Clerk. I do not know whether Mr. Morgan has got that book. Jim Winn and W. P. Jenkins who served with me on that Board are here. In all the years I have been a resident of Jackson County, I have never known of a single instance, where any negro sat on any Grand Jury or Petit Jury, in the entire history of that county, I don't recall any, I am forty-eight years old and I never sat on it myself. I have never been excluded from the jury roll, not that I know of, I don't know whether I would answer the qualifications.

Cross Examination:

In my selection for jurors for the jury roll and the jury box of my county, I did not inquire as to color,

that wasn't discussed, or the race, or the creed, it was political standing, or, religious standing, that would be the question there. The jury roll does not disclose the color of the person in the jury box. When I helped select the jury for my County, during my term as Jury Commissioner, including the time in which this indictment was found, I did not exclude any negroes from that jury roll on account of his race or color; not that I know of.

Re-direct Examination:

Q. Did you ever exclude any negro from service on the jury roll on account of his race or color or any other reason? A. No, sir. Not that I know of.

Q. Did you ever exclude from the jury rolls any negroes because you found first, he was a man under twenty-one years old or over sixty-five, and he was excluded by reason of his age; secondly because he was a person who wasn't esteemed in the community for being a decent and honorable citizen, for good sound common sense and judgment, did you ever see or hear of them not going to take that negro because he wasn't esteemed in the community for good sense and judgment? A. No, sir.

Q. Did you ever have ocassion to say, I can't take that negro because he is a fellow that has a disease which may affect or does affect, his mentality, did you ever say that to yourself, with reference to any particular negro? A. No, sir, negroes was never discussed.

Q. Did you ever say to yourself as a jury commissioner in compiling those lists, I am not going to take that negro because he has been convicted before of a crime involving moral turpitude, have you ever excluded a negro on that ground, did you ever find any negro that came within that category, under your personal knowledge in Jackson County? A. I couldn't recall any, no, sir, I don't know.

Q. Have you ever known of any negro in Jackson County who was excluded by reason of the fact that he could not read English, and that negro at the same time wasn't a free holder or house holder, did you ever say I can't take that negro because he is prohibited under

the rules from serving by reason of that provision? A. No, sir.

Q. Or anybody in your presence? A. It never was discussed.

Q. You had been a jury commissioner how long? A. I was on it under Bibb Graves administration, 1928, 1929, 1930.

Q. Three years? A. Yes, sir.

Q. And you never had occasion to exclude any negro in Jackson County by reason of the disqualifying provisions I have just called to your attention? A. Not to my personal knowledge, no, sir.

Re-cross Examination:

Q. As a matter of fact doesn't the law provide the jury roll shall be kept secret after it is made up? A. Yes, sir.

Re-direct Examination:

Q. Isn't it quite true, the fact, in the thirty or thirty-four years you have been in Jackson County, the fact that no negro has ever been called as a Grand Juror or Petit Juror, do you ascribe that to mere coincidence, or it just happened that way?

Attorney General Knight: We object.
Court: Sustain the objection.

Q. Do you consider that coincidence?

Attorney General Knight: I object.
Court: Sustain the objection.
Court: As I understand it, you had a roll of all the jurors, the male citizens?

A. We tried to do that, Judge.

Court: And you passed on their qualifications and in passing upon them you didn't know whether you were passing upon negroes or whites?

A. No, sir, didn't know them all.

Court: You inquired about their qualifications?

A. That is all that was discussed.

Q. If I understand it, in all those years you have been a resident, and in the several years you have been a Jury Commissioner, the fact that no negro has ever served on a Petit Jury is a mere coincidence?

Attorney General Knight: We object.

Court: Sustain the objection.

Mr. Leibowitz: I except.

Re-cross Examination:

Q. As a matter of fact it is a matter of selection instead of exclusion? A. Yes, sir.

Re-direct Examination:

Q. You don't know of any negro ever being selected do you, yes or no? A. I can't recall any.

Q. By that you mean you don't know of any ever being selected in the history of Jackson County, as far as you know? A. As far as I know I don't know whether there was or not.

Q. You don't know of any that has been selected? A. No, sir.

Re-cross Examination:

Q. As a matter of fact weren't a lot of white people in Jackson County not selected for juries? A. Yes, sir.

Mr. Leibowitz: We concede that.

Attorney General Knight: I want the record to show there are probably more white people not selected for jury service than there are negroes in the County.

A. Yes, sir.

Re-direct Examination:

Q. You wouldn't agree merely because the Attorney General asked you the question?

Attorney General Knight: We object.
Court: Don't answer that.

Re-cross Examination:

Q. You stated I believe that you thought there were more white people who were not selected for jury duty in Jackson County than there are negroes in the County? A. Yes, sir.

Re-direct Examination:

Q. Do you know of any reason why they were excluded? A. No, sir.

I didn't personally exclude them. As a matter of fact I don't know much about all the individuals on the juries. I do know some of them. I do know the names of some that have been excluded in Jackson County from service on the juries. I personally did not examine any negro for jury service. Could not say whether other Commissioner ever examined any particular negro for jury service. I never took the trouble to go into the negro section of Jackson County among the negroes to find out if there were some intelligent, decent, honest men, when I complied the roll. I don't know of any other man that took that trouble. I couldn't tell you about that. I don't know of any man who ever was delegated to go out in the negro communities among any negro persons, to inquire whether there was any material there fit for jury duty, that was never discussed, the race or creed wasn't.

K. M. MORGAN, witness called on behalf of the defense, after being first duly sworn, testified as follows:

Direct Examination:

I was the Clerk of the Jury Commission, Jury Board, for the year 1930, and had charge of the list from which the jurors were drawn that served on the Grand Jury that indicted these boys in this case; that means the jury box; and from that jury roll all Grand Jurors and Trial Jurors that served in this case. If there wasn't very many in the box we would put in some four to six hundred. I was clerk for three years, 1928, 1929 and 1930, three sessions. The other jury board didn't come in until 1931 or 1932. We make up a jury roll but it wasn't filed with the Probate Judge. The books are kept in his office. I haven't got that here; Judge Mooney did not send it with me. I am not one of the Commission now. I haven't them here.

The following then occurred:

Q. Do you know of any negro on the jury roll for the year 1930 or 1931, especially the rolls from which the Grand Jury that indicted these defendants was drawn? A. I don't know as I do, there were a lots of names.

Q. Just answer the question, do you or do you not? A. I wouldn't swear I did or I didn't, I don't know everybody in the jury box.

Q. Do you know any jurors on that list at all that were colored. A. I couldn't swear.

Q. Do you know any colored people on that jury? A. I couldn't recall who all was on the jury roll.

Q. Can you recall just glancing before you, can you recall the name of any colored person on that jury roll, can you recall, yes or no. A. I don't know exactly whether I can recall them or not.

Q. Can you recall as you sit there the names of any particular person that is colored, negro citizens of Jackson County, on the jury roll, cite one case? A. I wouldn't

want to say because there are so many on that jury roll.

Q. Do you know anyone, as you sit there can you recall any one person who is colored on that jury roll? A. I wouldn't want to say, because that has been about three years ago.

Q. Can you name any single negro on that jury roll from which this Grand Jury was drawn? A. I don't know, I wouldn't know all of their names, they were from all over the County and I don't know them all personally.

Q. I am not asking you about that, I am not trying to quibble with you. I ask you as you sit there, can you recall the names, as you sit there can you give us the name of one negro on that jury roll from which this Grand Jury was drawn? That is a simple question, I have asked it six times and I haven't gotten an answer? A. I couldn't name any white man and swear to it.

Q. I don't think you want to answer the question. A. I am not going to answer the question—

Court: Can you recall the names of any person?

A. It has been three years since I put them in the jury box.

Q. You can't recall one name? A. I didn't answer that that way.

Q. As you sit there in the chair, can you think back and recall, can you personally recall, one single name of any man you knew to be a negro on that list from which this Grand Jury was drawn? A. I wouldn't want to name one because I wouldn't know positively.

Court: You can't name any man?

A. No, sir, I wouldn't want to swear positive his name was there.

The witness testified further:

I have lived in Jackson County about twenty years I guess. I do not know of any negro that ever served on a Grand or Petit Jury in Jackson County, not while I was in the Court House, I am not there at every court. Of my own knowledge I do not know of any case where a negro sat on the Grand Jury or Petit Jury.

Cross Examination:

While I was Clerk of the Jury Commission it was my duty to obtain a list of names and submit it to the Jury Commissioners, from which the Board can tell whether or not they will be selected, I never inquired as to the race or color of any person. I do not know of any person having been excluded on account of their race or color, from the jury rolls. I never inquired and do not actually know whether there are any negroes in that box.

Re-direct Examination:

I can not name any human being on the face of God's green earth that can tell whether there were any negroes in that jury box.

Re-cross Examination:

I did not ever knowingly nor did I know of a Jury commissioner ever having excluded any person from the jury roll on account of their race, color, or creed, not in my presence. That was never discussed.

Re-direct Examination:

The following occurred:

Q. Just taking for granted it wasn't, if a man was a negro he was "out"? A. We didn't take things for granted.

Attorney General Knight: I object.
Court: Sustain the objection.

Q. That is just the unwritten law isn't it?

Attorney General Knight: I object.
Court: Sustain the objection.
Mr. Leibowitz: I except.

JOHN SANDFORD, witness called on behalf of the defense, after being first duly sworn, testified as follows:

Direct Examination:

I am fifty years old and live at Scottsboro, Alabama. I have lived at Scottsboro all my life. I am a family man, married, wife and children and am a plasterer by trade. I was not in the years 1930 and 1931, and for several years prior thereto, afflicted with any permanent disease or physicial weakness that would render me unfit to discharge the duties as a juror. I can read and am a citizen and born in this County. I have never been convicted of any crime and have never been convicted of any offense involving moral turpitude. In my daily walks of life, I deal with other people in the community both white and colored and have some times discussed the affairs of the State and National affairs there in the community in which I live, and matters of public interest with other citizens and read the paper. I read the Chattanooga Times and our paper and understand them as far as I can. I have never been put on a jury roll and have never been examined by any Jury Commissioner as to my qualifications and have never been called as a Grand Juror or Petit Juror.

The following then occurred:

Q. Do you know of any negro in Jackson County who was ever called as a Petit Juror or Grand Juror? A. I have known them to in the higher courts but I haven't known them in the lower courts.

Q. You mean the Federal Courts? A. Yes, sir.

Q. I am not speaking of the Federal Courts, I am speaking of the State Courts? A. No, sir.

Q. Do you know of any negro ever being called? A. No, sir.

The witness testified further:

I am acquainted with negroes in Scottsboro and other negroes in Jackson County. I couldn't say how many negroes I know over the age of twenty-one and under the age of sixty-five. I attend the Methodist Episcopal Church. The pastor of that church is Callahan. I know other members of the congregation and can mention the names of several members of my congregation, male citizens of Alabama and Jackson County, who are citizens reputed to be honest and intelligent men, and who are esteemed in the community where they reside for their integrity, good judgment and sound character, over twenty-one years of age and under sixty-five years and, who are not afflicted with a permanent disease or physical weakness that would render them unfit to discharge the duties as jurors and, men who can read English, and those who can't read English are house holders or free holders. They are Mark Taylor, my brother, Hugh Sandford, and John Staples comes in our congregation, and Floyd Snodgrass. I couldn't go on and state and keep them in my mind who all just comes in there. I know P. Toliver and know him to be a man of good sound judgment. I don't know about him being under sixty-five, but he is a good man. He is esteemed and honest, generally known to be honest and intelligent and I think he is esteemed in his community for integrity, good character and sound judgment. He is not an habitual drunkard. I don't think he is afflicted with any permanent disease or physical weakness that would render him unfit to discharge duties as a juror. I have known him all my life. I know him when I see him, he don't live right at my home. I think he can read and write. I don't think he has ever been convicted of any offense involving moral turpitude. I know Will Watkins, he lives at

Fackler, Alabama. I have known Will Watkins all my life. I think he would fit these qualifications you have outlined to me as to his character and all these other qualifications. I think he fits them the same as, particularly in reference to the case of Toliver. In my opinion he is a man qualified to sit as a Grand Juror or Trial Juror under the rules you outlined to me. I know M. T. Talley of Stevenson and have known him fifteen years. I think he would fit those qualifications, those which would render him eligible to serve as a member of a Grand Jury or Petit Jury, in the same way. I know Mr. Rudder of Stevenson, Alabama. I think he is a good man and he would qualify to serve as a juror if he was put on. I know Ed. Redd, but I don't know much about him. I don't know much about John Branch. I know Timberlake of Fackler, Alabama. His character and everything—he is a good man, but I don't think he can read. He is a family man and is head of a household. Except for being able to read I would say he possessed all the other necessary qualifications. I know A. Joseph of Stevenson. I would say he possessed all these qualifications as to age and the other requirements, all the questions I answered about Toliver in detail, I would say the same about this man. I know K. D. Snodgrass. I think he is a good man, he is a man over twenty-one and under sixty five. I think he is generally reputed to be honest and intelligent, and esteemed in the community for his integrity, good character and sound judgment and not a habitual drunkard and he isn't afflicted, to my knowledge, with any permanent disease or physical weakness which would render him unfit to discharge the duties as a juror. I think he would be qualified under those qualifications. I don't know much about Hugh Collier. I know Louis Cole. He is all right. He would pass all of those qualifications. I know Dave Stevenson, and I think he would pass all of those qualifications. I know Bud Moore, a merchant. I think he would pass all of these qualifications. When I say I think he would pass it is my opinion or knowledge from what I have learned in the community about his reputation. I

know C. S. Finley. I have known him all my life. I think he would pass all of these qualifications without going into detail. I know Travis Mozley all of his life. I think he would pass all of these qualifications. I know Pleas Larkin, have known him all my life. I think he would pass all of these qualifications. I know Elijah Matthews. I have known him all of his life. I think he would pass all of these qualifications. I know Henry Ross. I have known him all of my life. He wouldn't pass the qualifications now because he has been proven to be of unsound mind. All of these names which I said were qualified to sit on Petit and Grand Juries were negroes.

Cross Examination:

My name is John Sanford. I have lived in Jackson County nearly all my life. I am a plasterer. I have been engaged in that occupation about twenty years. I never took part in the deliberation of the Jury Commission of that County. I have never been on a Federal Jury Board. I know all of these people the defense asked me about yesterday and have known them for a lifetime.

The following then occurred:

Q. And know they possess all of the qualifications prescribed for a juror do you? A. What he asked me I do.
Q. What he asked you? A. Yes, sir.
Q. What did he ask you?

Mr. Leibowitz: I object to that question.
Court: Overrule the objection.
Mr. Leibowitz: I except.

A. I can't tell you right now.
Q. What did he ask you? A. I couldn't remember all of the things he asked me.
Q. You have testified that Hugh Sanford, Mark Taylor, John Staples, Floyd Snodgrass, Henry Ross, Travis

Mosely and others, possessed the qualifications prescribed for a juror, haven't you? A. That is what he asked me.

Q. Don't you know that to possess the qualifications of a juror that you must be held in esteem in the community in which you live as a man of sound judgment? A. I think that is what he asked me.

Q. What does the word esteem mean?

Mr. Leibowitz: I object because he wouldn't let me ask him—the State objected to the very question I put to the learned Jury Commissioner.

Attorney General Knight: I am examining the witness on cross examination.

Court: Make your objections to the Court, overrule the objection.

Mr. Leibowitz: I except.

Q. Tell me what the word esteemed means? A. I don't know whether I could tell you that or not.

Q. How do you know they possessed the qualifications inquired about then?

Mr. Leibowitz: You are not going to bully this witness, or any other wtiness.

Court: Make your objections to the Court.

Mr. Leibowitz: Ask the Attorney General to stand back a little bit, and just lower his voice, and stop sticking his fingers in the people's eyes.

Court: Ask him the qustion.

Q. Will you please tell me what the word "esteem" means? A. I might tell you if I had a dictionary, or something the other, I couldn't "rememorize" it.

Q. You swore these people possessed the qualifications of a juror he stated, didn't you? A. According to my knowledge they did.

Q. And you think they are esteemed, do you? A. The way he asked me according to my knowledge.

Q. And you don't know what the word "esteemed" means John?

Mr. Leibowitz: Call him Mr. Sanford, please.

Attorney General Knight: I am not in the habit of doing that Mr. Leibowitz:

Court: That has nothing to do with the case.

Q. You swore all of these men possessed the qualifications of a juror yesterday? A. Yes, sir.

Q. And you tell me you don't know what the qualifications of a juror are, isn't that true?

Mr. Leibowitz: We object to that.

Court: Overrule the objection.

Mr. Leibowitz: We except.

Q. You tell me you don't know what the qualifications of a juror are now?

Mr. Leibowitz: We object if the Court please.

Court: Overrule the objection.

Mr. Leibowitz: We except.

A. I know what he asked me what he said—I tried to answer what he asked me.

Q. You just answered anything he asked you? A. He asked me was he a freeholder or a householder.

Q. Did he ask you anything about esteemed? A. And had he ever been convicted.

Q. Did he ask you anything about esteemed? A. I don't know that he asked me all of that, he might have asked me, I don't remember.

Q. Didn't he ask you if these people you named would make good jurors and possessed the qualifications? A. And their character and being a citizen of the county and state.

Q. Are they esteemed, answer that question, yes or no. A. As far as my knowledge, I think they are.

Q. What does esteem mean John? A. I wouldn't know that, I might know if I had something to look it up in.

Q. You would know if you had something to look it up in, but you can swear before you looked up, isn't that what you did yesterday, John?

Court: That is argument with the witness.

The witness further testified: The qualifications of jurors I might not know the form of in the book laid down, but I know them in a way. I know in a general way but not in the form of the book laid down. I couldn't memorize from the book or the law. Moral turpitude means, that is a man that has not been convicted of any malicious crime that would stain his character and reputation in the community in which he lives. I say that all of these people whose names were called to me yesterday have not been convicted of any crimes involving moral turpitude. They are not guilty of any crimes involving moral turpitude, not that I know of as far as my knowledge.

I stated yesterday they possessed the qualifications of a juror and I say today what I said yesterday. I don't know whether they possess what is prescribed by law. I don't know whether any of these names he called to me yesterday are in the jury box or on the jury roll.

Re-direct Examination:

I would say all of these men whose names I have mentioned, were well thought of, well spoken of in the community in which they live. I never sat on a jury commission. I have never been invited to sit on a jury. I have never seen any Jury Commissioner of Jackson County, nor has any agent of a jury commission ever come to my district or precinct where I live, and asked me or anybody else any questions, any of my neighbors any questions, not that I know of, not for the purpose of giving a worthy, decent negro the test and a chance to sit on a jury. I have never heard of any such case.

Re-cross Examination:

I did not testify yesterday that Timberlake was qualified for jury service. I said he was qualified—he asked

me I remember so far as my knowledge on that, and I said he couldn't read and write and under that head he wouldn't be qualified because he couldn't read and write, but any other thing he was all right as a good man. I don't know that is the reason the school board of that county asked that he be removed. I never sat on the school board with him.. I have been on the school board. I am not now. I think Timberlake is looked up to highly. As a negro in our county he is. I am talking about he is looked up to in our county as a negro among the white folks as being a high standing darky. He is looked up to as a man of sound judgment all right, but I said that would be one thing that would knock him out because he couldn't read and write. I don't know that that knocks him out. Timberlake lives on a white gentleman's farm. There are white people there in that community. There is white people and colored people living all mixed up, white tenants and colored tenants. I testified as to Timberlake's reputation. I heard those people in the community in which he lives all say he is a good man. I can't recall the man he works for but I heard him say the merchants at Fackler says he is a good man. I have not heard them say he was esteemed as a man of sound judgment. In there speaking about him they wouldn't hardly put all of that emphasis to it. I heard them all say he had good sound judgment. I think it is prized in his community he has lived a long time on the farm he is living on. I don't know nothing about the price or value set on his judgment. I couldn't tell you if he is on the jury roll. I don't know whether any man I testified about was on the jury roll.

Re-direct Examination:

The duties of the colored school board in most school districts is they are to look after the upkeep of the school and property, indebtedness of the school, and keeping the school going on under a good system, and seeing to getting good qualified teachers, that is their duty in our district, and I suppose that is it in all dis-

tricts. The Superintendent of Education appointed me on the school board. He is a white man.

Re-cross Examination:

We have only supervision over colored schools; we don't handle white schools.

C. S. FINLEY, witness called on behalf of the defense, after being first duly sworn, testified as follows:

Direct Examination:

My name is C. S. Finley. I live at Scottsboro, Alabama. I am fifty-five years old. I was bred and born there. I have never seen a colored man sitting on the jury in the Circuit Court of Jackson County. I never served on a jury. We have school boards in my county. The members of the school board are Mark Taylor, Hugh Sandford and Lawrence Hunter, now. They are negroes. I think they were made members some time during last year. We have colored schools in my county and colored school teachers. I don't think there are any men school teachers there. Some in the county, but not in my district. We have churches, preachers, deacons and trustees, they are men. I don't know exactly how many colored churches, good many, though. We have an association of colored churches that meets at Scottsboro. That embraces churches all over the county in that district. We have preachers that preach there. Callahan, he is there and Reverend Graves, and Reverend Crutcher. Those men are men of some education. There is one hospital there but it is white. I attend the schools sometimes. I used to be a trustee of a school at Scottsboro. I was trustee there for about six years. At that time the people elected the trustees, but since that we select so many and send them in and the white board selects them out of that number. There was an election when

I was elected trustee. Regular ballot voting in the election. I was elected by ballots. I don't remember what year, I think it was long about 1927 or 1928. I served about six years, until they changed the law. Then the white trustees appointed my successor. Huey Sandford was the first they appointed, and my son, and John Sandford, and Mark Taylor. They abolished that board after they served the term out. My son is living. He is now at Scottsboro. He is thirty-two years old, in good health. He went to school when he was a boy. He got about the seventh grade. I went to school and as far as the eighth grade. I know Mark Taylor, Will Watkins, L. C. Cole, Pleas Larkins and W. T. Mesely. I know some colored men in Jackson County, that are over twenty-one years old and under sixty-five, Huey Sandford, Snodgrass, and there is a Cain Snodgrass I know. The duties of the school board while I was on it were to see after the school, watch after it, keep up the interest of the school and everything. I had to look after the employment of the teachers, look after the property, and look after the discipline and welfare of the children. I don't know how many schools we have in Jackson County, a good many schools. I own property in Jackson County. All these other negroes I have spoken about own property and pay taxes. I have never been called or questioned about sitting on a jury. I do not know whether any of these negroes, whose names I have called, have ever been called by the jury board, and questioned whether or not they were qualified to sit on a jury. I never heard of anything like that going on in Scottsboro, or Jackson County, of the Jury Commissioners investigating the colored men to see if they were qualified. The school board examines into the qualifications of school teachers, and make inquiries, before they hire them. My board did that.

I was acquainted with the reputation of Mark Taylor and his standing in the neighborhood where he lived. It is good. Ever since he has been around there he has made a good citizen. I would say he is a man of sound

judgment. He is not afflicted with any disease. He is not a habitual drunkard. He has never been convicted for stealing or any crime involving moral turpitude that I know of. He is a man that bears the name of having a good character. He is a householder, the head of a family, married man. He owns land. He is a freeholder.

I know L. C. Cole. He lives at Stevenson. His character is good as far as I know of him, I never heard anything against him. He is a man of good health. He has no disease or anything that would impair his body or mentality that I know of. He has never been convicted of any crime to my knowledge, of any stealing or anything of that kind that I know of. Everybody gives him a good name. He is a freeholder, a householder, the head of a family and owns land. I never heard of him drinking.

I know Please Larkin, W. T. Moseley and Cam Rudder at Stevenson. Cam Rudder is a man of good character, I would give him a good name on all these questions. I know A. Joseph at Stevenson. His character is good. I know Louis Cole. He is all right, a good man, good negro and as to all these questions you asked me about. I know K. D. Snodgrass of Hollywood. His character is good. He is good, on all these questions I asked you about, for jury service. I know Bud Moore. His character and his standing is good. I know Travis Moseley, a railroad man that lives in Scottsboro. His character is good. I know Elijah Matthews of Scottsboro. His character is good. I know Henry Ross. His character is good but he has been kinda insane for the last seventeen or eighteen months. It has gotten bad since these boys were indicted in this case, prior to that time he was all right. I know the Reverend Crutcher who used to live down there, pastor of the Baptist Church.

Cross Examination:

My name is C. S. Finley. I have been a citizen of Jackson County all my life, raised and born there. I

know John Sandford that just testified here, and I know Snodgrass. They are honest men as far as I know and intelligent men. I know the community in which they live. There are white people in that community. More white people than colored people. I am just going by the way they act about them, they seem to think pretty well of them. They treat them as citizens and everything, nice to everybody that tries. The way they live, they never do nothing, nothing like that. I think a person who never does anything, I think he is a good citizen. I mean by doing nothing not in trouble, into a whole lot of something or other. My son was into something about a week or two ago and got convicted in one case. In the other case they turned him loose. I esteem Snodgrass and Sandford. I esteem them for their good sound judgment. I mean by the word "esteem" men who do right and justice; that is esteem. I try to do right in justice to them. Everybody looks on them as their character, they looks on them as good fellows. My son has had a good record, that is the only thing he has ever been into, up to that he was esteemed as a good citizen.

I have talked about my school board, those are local school boards just in the community. In my county white people and colored people don't go to school together. We have separate school boards and separate schools. Sandford and Toppery Snodgrass were elected by the colored patrons of the school. That means people who have children in that particular school. That doesn't mean everybody in the county elected them on that board, nor everybody in the community, but just the majority of that particular school. It is just a colored school. I think these people possess the qualifications of jurors. That is what I should think about it, they are men of good morals, and good standing, and I think they would be qualified. A list of names was read to me and I testified I thought some of them probably had good morals and so on, but not all of them because I didn't know all of them, most of them. I have never sat with the

jury board. I do not know how the jury board selects the people whose names they put on the jury rolls of Jackson County. I don't know whether I would know all about it. I have seen them selecting them. I have been in there and seen them. It look like they tried to get the best. I saw a jury commissioner select them when they were getting them on cases.

The following then occurred:

Q. Don't you know that isn't the selection of the jury roll? A. Yes, sir, I said I didn't mean—

Mr. Leibowitz: We object.

Attorney General Knight: I expect to show the absolute ignorance of this negro.

Mr. Leibowitz: May I state my objection. I object to this question on the ground it is highly incompetent, irrelevant and immaterial, and for the reason this man's knowledge as to the large procedure, which is probably not known by one-half of the lawyers in any county in this state, and it is not a test of this man's qualifications to sit on a jury. He isn't supposed to know all the technical rules, how the names are put on the jury and how the roll is made up, especially in view of the fact that none of these folks at any time have ever been given an opportunity to serve on a jury and learn these things.

Court: Overrule the objection.

Mr. Leibowitz: I except.

Q. Have you ever seen the Jury Commissioners selecting a jury? A. No, sir.

Q. You have not? A. No, sir.

Q. Do you know how they go about selecting a jury?

Mr. Leibowitz: I object.

Court: Overrule the objection.

Mr. Leibowitz: I except.

A. No, sir, I don't know how they go about it.

Q. You don't know whether they inquire or send people out to examine people personally or not?

Mr. Leibowitz: We object on the ground he says he knows nothing about it.

A. No, sir, but I don't think they do.

(No ruling.)

Q. White people or colored people? A. No, sir, I never heard of it.

Q. You know of a good many white people in Jackson County, I suppose? A. Yes, sir.

Q. Do you know whether they were on the jury roll or not?

Mr. Leibowitz: We object because that has no bearing on this case.

Court: Overrule the objection.

Mr. Leibowitz: I except.

A. Not all of them.

The witness further testified: I know because lots of them are not competent to be on the jury, and lots of colored people are not competent. I don't know whether I know all of them that is on it. I don't know how many to my knowledge that are on it. I do not know if the names of all these negroes here, I testified as to their character, are on the jury rolls of Jackson County.

Mr. Leibowitz stated: I appreciate this is a fact of proving whether or not the jury roll contained the names of any colored persons, and I appreciate the difficulty in proving that if the Attorney General is going to insist on me proving it, but General Chamlee and I proved that to a mathematical certainty. I will have to ask the indulgence of the Court to get the jury roll, and we will

bring every living man on that jury roll if it takes twenty-five years to do it, and we will prove that they are white. If the Attorney General will not make a concession along that line I will be compelled to do that.

Attorney General Knight answered: The Attorney General makes no concession whatsoever, prove your case.

MARK TAYLOR, witness called on behalf of the defense, after being first duly sworn, testified as follows:

Direct Examination:

I am forty-one years old and live at Scottsboro. I was born in Limestone County. I have lived in Jackson County for twelve years. I lived before that time at Sheffield, Tolbert County. Since I have been in Jackson County I have never seen any negroes on a Circuit Court jury. There have never been any names of negroes in the jury box, not to my knowledge. I never heard of any. I own land, am a married man. I went to school a little and got to the sixth grade. I am on the school board of Jackson County, district number eighty-eight. I got my appointment as a member of the school board under the late law, being a qualified voter of the county. They allow me to vote. I was appointed on the school board this last year. The local trustees was elected by the school district and the restriction was they had to have qualified voters. I was elected in the district by the people in the community. Two other negroes were elected as school trustees in my county, Hugh Sandford and Lawrence Hunter of Scottsboro. They own property and are over twenty-one years of age and under sixty-five. Their character and reputations is good, I suppose, I don't know anything against their character. They are seemingly esteemed in the community in which they live for their honest and sound judgment. They are sober men, not habitual drunkards. Men that are not

afflicted with a disease. They own their own land. They can read and write. They lived in that county all their lives to my knowledge. Sandford is about forty something years old, and Hunter about the same. They are men who are reputed to be honest men. I know ex-trustees, former trustees of the school board down there, G. A. Edmondson, John Sandford and Robert Finley. They live at Scottsboro. They are over twenty-one years of age. They were trustees, these men, Sandford and Edmondson, when I came to the county, when I was admitted on the board. They served several years, I don't know just exactly. They are esteemed as honest men of good judgment and good sense, and good health in the community in which they live. They were never convicted for stealing or any crime involving moral turpitude that I know of. John Stapler served as trustee in that county about five or six years. He is an old man.

I know Will Watkins, S. C. Cole, Pleas Larkin, W. T. Moseley, M. T. Talley, Cam Rudder, Ed. Redd, John Branch, M. F. Timberlake, A. Joseph, K. D. Snodgrass, Louis Cole, Dave Stevenson, Bud Moore, C. S. Finley, Travis Moseley, Pleas Larkin, Elijah Matthews and Henry Ross. These men I have named are all negroes and live in Jackson County. I never knew of any one of them serving on a jury. They are esteemed men, good character in the neighborhood in which they live. All are esteemed as men of good character and they are of good health and sound judgment with the exception of Henry Ross; he seems to be mentally impaired in some way, feeble minded. He has been that way a year or eighteen months to my knowledge. At the time this case started two years ago, he was apparently in good health. This list of men I have called out here are men of good character and sound judgment, as far as my knowledge. Some of them live on the rural and I am not so well acquainted. No one of them is a habitual drunkard that I know of. No one of them has ever been convicted of stealing or any offense involving moral turpitude to my knowledge. They can read English, except Timberlake;

I am under the impression he can't read nor write. They are married men and have their homes. Some of them own land. They are over twenty-one years old. The majority of them, in the main part, are under sixty-five. Maybe one or two are in excess of that.

Cross Examination:

Timberlake belongs to the Baptist Church. I am not a Baptist. John Sandford is a Methodist. I am a Methodist. Toppery Snodgrass is a Methodist. All but Timberlake, he can't read and write, can do all of these things. Some of these people whose names I have called were on the school board or board of trustees, including myself. That is a local colored school. When I ran for the position I now hold, only the patrons of the school voted for me—colored people. I didn't run county wide. I don't know of any colored people who have been elected throughout the county, in a county wide election as a member of a school board. I do not know the names on the jury roll of Jackson County. I do not know whether or not the names Mr. Chamlee just read to me are on the jury rolls of Jackson County.

TRAVIS MOSELEY, witness called on behalf of the defense, after being first duly sworn, testified as follows:

Direct Examination:

My name is Travis Moseley. I live at Scottsboro and I am forty-one years old. I was born and raised there. I never saw any negroes sitting on the Circuit Court jury in Jackson County. I attend the Court House and witness trial and court proceedings just once in a while. I never heard of a negro sitting, or being called to sit on a jury in Jackson County. We have got school boards down there and schools. Lawrence Hunter, Mark Taylor and Hugh Sandford are trustees now. I was born and

raised with Hugh Sandford. He is a man of good character and good judgment, and good health, and not a habitual drunkard; he is all right as far as I know. I don't know how he got the position as trustee on the school board, because you see I have stayed on the road since 1917, I was just at home every three days. I am a railroad man. I own my own home. I have been married. I am a freeholder. They have never been convicted of any offense like stealing, or malicious shooting, anything involving moral turpitude. These men seem to be well esteemed in the neighborhood where they live. They can read and write. They are over twenty-one years of age and under sixty-five.

I am acquainted with many colored people or negroes in Jackson County at some stations. I know Mark Taylor, John Sandford, L. C. Stapler, P. Toliver, Will Watkins, M. T. Taylor, Cam Rudder, John Branch, M. F. Timberlake of Fackler, A. Joseph, K. D. Snodgrass, Louis Cole, John Stapler, Bud Moore, C. S. Finley, Pleas Larkin, Elijah Matthews and Henry Ross. Another negro I know in Jackson County, over twenty-one years of age and under sixty-five is Oliver Little of Scottsboro. He is a man of good character, stands well in the community, is sober and not a habitual drunkard and is not diseased or crazy. He owns land, is a married man and has got a family.

These names you have asked me about, all of these people are negroes. And all live in Jackson County. In my opinion they are men of good character and sound judgment and are esteemed and regarded as good citizens in the neighborhood where they live. No one of them on the list has ever been convicted of any offense for stealing or anything of that kind. They can read English. No one of them has ever served on a Circuit Court jury in Jackson County. They are all over twenty-one years of age, I think, and under sixty-five.

Cross Examination:

I know M. F. Timberlake, he lives at Fackler. I testified all of those who were called could read and write.

That is what they tell me, all the names of the men he said, could read and write, all of them lived around Scottsboro. Those names who do not live at Scottsboro, I couldn't say I know their standing. I do not know whether they are on the jury roll or not.

L. C. COLE, witness called on behalf of the defense, after being first duly sworn, testified as follows:

Direct Examination:

My name is L. C. Cole. I am fifty-two years old. I live at Stevenson, Alabama. I have lived in Jackson County fifty-two years. I have never served on a Circuit Court jury in Jackson County. I never knew of a negro serving on a jury in Jackson County. I was born at Stevenson. I went to school. I got as far as the seventh grade. I learned to read and write. I have never been convicted of any offense. I know Mark Taylor, John Sandford, L. C. Stapler, Will Watkins of Fackler, M. T. Talley, Cam Rudder, Ed. Redd, John Branch, A. Joseph, Hugh Collier, Dave Stevenson, John Stapler, Bud Moore, C. S. Finley, Travis Moseley, Pleas Larkin and Henry Ross.

Mark Taylor lives at Scottsboro. I am acquainted with his standing, he is esteemed as a good citizen or a good negro in the community in which he lives. I haven't heard anything else. He bears the reputation of being honest and intelligent. He is a man of good sound judgment, and not afflicted with any disease or anything of that kind. He is not a habitual drunkard, a man that gets drunk and stays drunk. He can read the English language. He has never been convicted of any offense that I know of. He owns his own property, has his own household and is a married man.

I know John Sandford. He lives at Scottsboro. I have known John quite a while; I think he is all right.

He is an honest man and intelligent. He is esteemed and regarded as a good citizen in the community. He is sober. He has never been convicted of any crime. He is not a habitual drunkard. He is a man of sound judgment. I think he has a good mind and good judgment. He is over twenty-one years of age and under sixty-five.

I know Will Watkins of Fackler. I have known him quite a while, twenty-five or thirty years. He is esteemed, and is generally reputed to be honest and esteemed in the community for his integrity and good character and sound judgment. He is not a habitual drunkard. He has never been suspected of being diseased mentally. He has never been convicted of stealing or any offense involving moral turpitude that I know of. He can read the English language. He is a negro citizen of Jackson that I know of; he is an older man than I am. He might have served on a jury.

I know M. T. Talley of Stevenson. I would not give him the same good reputation I did for this last witness Watkins. I wouldn't give Matt that, he had a stroke recently. Two years ago he was all right. At that time I would have given him a good reputation. A. Joseph and Hugh Collier are all right and Dave Stevenson is all right. Those I know we have been discussing here, have the qualifications specified in these questions here, that is they are esteemed in the community for their integrity and good character and sound judgment. And they are not habitual drunkards, and have never been convicted of stealing, and they can read and write. They never served on a jury in the Circuit Court of that County to my knowledge, neither in my life or theirs. I do not drink liquor and get drunk. I have no disease or anything wrong with me. I have had no stroke, or am not insane. I have an enlarged liver. That does not affect my judgment. You might put down Charlie Berry and Horace Young that have the qualifications

for jurors. They live at Stevenson. They never served on a jury, they are too young. They are esteemed as good citizens and have good character.

Cross Examination:

I did not say I wouldn't give M. T. Talley a good character because he had a light stroke. His character is all right, but I said he might be sound minded, his character is all right, good as anybody's. This Berry I mentioned just a minute ago, I meant he was too young to serve before this time. I say these people are esteemed in the community as men of sound judgment. By the word "esteemed" I mean law abiding, good citizens, something like that. I mean when I say a man is esteemed for his sound judgment that he is a man that has got a good mind, knows what he is talking about, what business is.

The following then occurred:

Q. Do you know what the word "esteemed" means? A. I ain't got my dictionary.

Q. All of these names you have called are citizens, you say, of Jackson County? A. Yes, sir.

Q. Did you ever help prepare the jury rolls for Jackson County? A. No, sir.

Q. Can you tell me as a matter of fact whether or not those names are on the jury rolls of Jackson County? A. No, sir.

Q. You don't know whether they are or not? A. I don't know whether they have ever served.

Q. I am talking about are those on the jury rolls? A. I guess they are on the rolls.

Mr. Leibowitz: I move to strike that out, the answer what he guessed.

The Court: Motion overruled.

Mr. Leibowitz: I except.

The witness further testified: I couldn't testify whether they are on the rolls, I haven't seen them. I don't visit court very much, I never have time, I couldn't tell you. I haven't been to court much. I am a railroad man. Of my personal knowledge, I don't know whether they ever served on a jury or not. I don't know they haven't.

Re-direct Examination:

Q. He asked you about the jury rolls, do you know what he means by jury roll? A. A jury roll is twelve men for jurors.

Q. Your idea of a jury roll is twelve men sitting in the box? A. Yes, sir,

Q. Did you ever see a negro in the box in Jackson County? A. No, sir.

Q. That was a jury roll he was talking about? A. I haven't seen that?

PLEAS LARKINS, witness called on behalf of the defense, after being first duly sworn, testified as follows:

Direct Examination:

My name is Pleas Larkins. I am fifty-six years old and live at Larkinsville, Alabama, in Jackson County. I have lived there all my life. I went to school and learned to read. I own my home. I never sat on a jury in Jackson County. I never saw negroes on a jury in Jackson County. I read the newspapers. I never read about negroes serving on a jury in Jackson County. I am acquainted with some negro men in Jackson County and some few at Scottsboro.

I know Mark Taylor and John Sandford. I am acquainted with the general reputation and character of those men. I have been acquainted with Mark Taylor about seven or eight years I reckon. He is a man gen-

erally reputed to be honest and intelligent, and esteemed in the community for his integrity, good character, and sound judgment. He is over twenty-one years of age and under sixty-five. He is not an habitual drunkard, a man that gets drunk. He can read. He is a married man with a family.

I know John Sandford. He possesses the same qualifications you asked me about Mark Taylor. I know L. C. Stapler. He possesses the same qualifications as this negro, Mark Taylor. I know P. Toliver of Hollywood. I would give him the same record as I would the others. I know Will Watkins of Fackler. I would give him a good character, the same as the others. I know Cam Rudder of Stevenson. I would give him the good name and good character, the same as I would the others. I know Louis Cole. I would give him a good name and character, he is qualified. I know Bud Moore. I would give him a good name and good character and good qualifications. I know C. S. Finley. I would give him a good name and good character. I know Travis Moseley. I would give him a good name and good character. I never sat on a jury myself. I was never called as a juror, or ever called to come to court as a juror and excused after I got there.

Cross Examination:

I testified as to all of these people who I said possessed good character, as far as I know. When I say they are esteemed for sound judgment I mean they are esteemed above the common class of people. I know they are not, to my knowledge, on the jury. I know they are not because I never heard of it. I have never seen the jury rolls of the county. I have never looked in the box. I have never helped select the jurors of my county. I don't know whether they are in the box or not, but I said I never heard of them. I do not go to court every time court is held. I don't know of my own knowledge whether they ever served on a jury.

Re-direct Examination:

We have school boards in our county. There are no colored men as trustees on the school boards in my town. I suppose there are in Scottsboro, but not in my town, it is kinda of a small village.

Re-cross Examination:

Those are colored schools. As a matter of fact the trustees are not elected except by the patrons of the school, the colored people.

Re-direct Examination:

Defendants' attorney asked the witness the following question:

Q. Is it a matter of general understanding and common knowledge that negroes never serve on juries in Jackson County?

Attorney General Knight objected. The Court sustained the objection and defendants' counsel excepted.

JOHN STAPLER, witness called on behalf of the defense, after being first duly sworn, testified as follows:

Direct Examination:

My name is John Stapler. I live at Scottsboro. I came there in 1896. I never saw a negro on a jury in Jackson County in the last thirty years. They have a school board at Scottsboro. I know who the members are now, they have had several, Mark Taylor, Hugh Sandford and Hunter. Two of them I have known all of their lives. And one of them, Taylor, is a son-in-law of mine, and I have known him for the last ten or fif-

teen years. These men I have mentioned are men generally reputed to be honest and intelligent men, and esteemed in the community for their integrity, good character and sound judgment. They are sober men, not habitual drunkards. They are regarded and reputed to be honest men. They have never been convicted of stealing or anything of that kind involving moral turpitude. They are married men and are negroes that live in Scottsboro or Jackson County. They are over twenty-one years of age and under sixty-five years of age. I know Mark Taylor and John Sandford. They live in Scottsboro. I know their qualifications as you have asked me about these other fellows. They are supposed to be honest men, of sound judgment and good citizens. I never heard nothing against them. Supposed to be men of honesty and intelligence, and men of sound judgment. Good men, law abiding citizens and not habitual drunkards. And men who never have been convicted for stealing, or any crime involving moral turpitude that I know of. All married men. All of them own their property there.

I know Pleas Tolliver of Hollywood. He is a man of good character like these others I have named, as far as I know. I have been knowing him for forty years and never heard anything. I know Will Watkins of Fackler. I never heard anything about him, of course he don't live in my neighborhood, he lives ten or twelve miles from me, in Jackson County. I have known him thirty-five years. I know Cam Rudder who lives in Stevenson. I am pretty well acquainted up there. I know Ed. Redd and John Branch of Bridgeport. I would give Redd a good name and character. I never heard anything else of him.

I know A. Joseph of Stevenson. I give Joseph a good character and name. He always has had as far as I know. I know Louis Cole. He bears a good name, also good character and sound judgment. I know Dave Stevenson. I never heard nothing wrong with him. I know

Pleas Larkin, Henry Ross and Elijah Matthews. I never heard nothing against them. I would give them the reputation of being esteemed as good citizens in the neighborhood in which they live, and possessing sound judgment and good character. All of these men I mentioned, or all these men we have been talking about, are negroes living in Jackson County. I never knew or heard of one of them sitting on a jury in the Circuit Court of Jackson County. I have lived in Jackson County since 1873. I never served on a jury myself.

Cross Examination:

I say those names Mr. Chamlee called to me are men who are esteemed in the county as men of good reputation and sound judgment in their community. They always had as far as I know. I mean by esteemed—esteemed people, never had nothing wrong with them. Lots of them have the same character they have up there, I am telling about those he asked me about. I don't say that I have any reason to complain of any justice done me by a jury in Jackson County. I have never been convicted of any offense. I have never seen the jury rolls of Jackson County. I have never looked in the jury box of Jackson County. I cannot swear those names are not on the jury rolls of Jackson County. I come to court very near every term I am around there. I live in town there right close. I don't know the list of names in that jury box. I don't know whether they are white or black. I made the statement I had never seen a negro on a jury in Jackson County. I haven't seen them on juries in Jackson County in my lifetime.

WILL WATKINS, witness called on behalf of the defense, after being first duly sworn, testified as follows:

Direct Examination:

My name is Will Watkins, I live at Fackler in Jackson County, Alabama. I have lived there sixty-six years.

I never sat on a jury. I never saw a negro on a jury in Jackson County. I go to Scottsboro sometimes and attend court sometimes. I went to school. I can read the English language and read the newspapers. I have have never been convicted of any offense. I own my own home. I am a married man.

I know some of the negroes that are living down in Fackler, Lessie Austin, he is about thirty years old. Milton Timlin, Robert Stewart, Henry Waggoner, Jesse Harris, Harry Harris, Will Harris, Ransom Stewart, Lucien Scott, Church Stewart, Alvis Stewart, Will McCarver and Hubert Stewart. I am acquainted with the general character of those men. That list I have named are men who are generally reputed to be honest and intelligent, and esteemed in the community for their integrity, good character, and sound judgment. I would give them good names, good character. None of them are habitual drunkards from my knowledge. None of them has ever been convicted for stealing or anything like that, any offense involving moral turpitude, to my knowledge except Will Harris. They are married men and got families. Over twenty-one and under sixty-five years of age.

I am sixty-six years old. I know at Scottosboro, John Stapler, Mark Taylor, and John Sandford. I would give them a good character the same as I would those at Fackler. At Stevenson, I am acquainted with Cam Rudder and Louis Cole. I know A. Joseph, a hotel man, hotel porter. I know Hugh Collier, Louis Cole, Bud Moore, C. S. Finley, Travis Moseley, Pleas Larkins and Henry Ross. As far as I know all of these men I have named, are generally reputed to be honest and intelligent men, and esteemed in the community for their integrity, good character, and good judgment, in the community in which they live. I have lived in that county all of my life, at Fackler. I have known those at Stevenson, maybe, twenty-five or thirty years. I did not ever

Cross Examination:

know of any one of them ever sitting on a jury. And all of these boys, these men, are over twenty-one years of age. I don't know how old they is, I know they are over twenty-one.

I know Cass Finley. His boy was convicted just shortly ago. Cass was not convicted himself that I know of, I never heard of it. I didn't understand I said these people whose names have been called, are citizens of good standing, and they are esteemed for their reputation in the community in which they reside as men of sound judgment. I don't know what esteemed means. I don't understand so many words.

Re-direct Examination by Hon. G. W. Chamlee:

Q. The word esteemed means, in the community in which a man lives the estimation in which he is held in the minds of his neighbors and friends, whether he is esteemed as a good citizen or bad citizen. Now with this explanation, I will ask you if the men you have testified about here in this trial are esteemed as good citizens in your opinion in Jackson County? A. Yes, sir.

Re-cross Examination by Attorney General Knight:

I never looked at the jury rolls of Jackson County.

L. C. STAPLER, witness called on behalf of the defense after being first duly sworn, testified as follows:

My name is L. C. Stapler. I live at Limrock, Jackson County. I am seventy-six years old. I have never seen any negroes on the jury in Jackson County in the last thirty years or any other time in Jackson County. I am acquainted with negro men in the neighborhood where I live that are good citizens and of sound judgment. Plens

Larkins, Lewis Sandford, John Sandford, Mark Taylor, Will Watkins, Louis Cole, Cass Finley, Matt Talley, M. T. Talley. I know Ed. Redd of Stevenson, John Branch, A. Joseph, Hugh Collier, Louis Cole, Dave Stevenson, John Stapler, Bud Moore, Travis Moseley, Elijah Matthews, Henry Ross, Reverend Crutcher. They have got a school board at Scottsboro, the members of that board, the trustees are negroes. They always had them at Scottsboro. There is a large number of negro men in Jackson County. These men I have named that I know, are generally reputed to be honest and intelligent men, and esteemed in the community for their integrity, good character and sound judgment as far as I know. They are not habitual drunkards, men that make a habit of getting drunk and staying drunk until the whiskey gives out. These are sober men, I think. None of them has ever been convicted of stealing, or anything of that kind. I don't remember any of them that has been convicted of a crime like stealing, that reflects on him and involves some violation of the law, or misconducts, or convicted of stealing or anything. What I mean to say is that these men are honest good citizens, all having good character, truthful men, always proved out that way. These men are all negroes. I never know of either one of them being summoned for jury duty or sitting on a jury. They are over twenty-one years of age, this crowd I named and some are under sixty-five. It is a matter of custom in Jackson County that no negro can sit on a jury, that has been a custom for sixty years. A man being esteemed as a good citizen means a man that has got a good character, a man that don't steal and tends to his own business, a man that has got a good character, a man that lives correctly and who his neighbors speak well of.

Cross Examination:

I am getting on very well in Jackson County. Nobody has imposed upon me there. I live at Limrock, twelve miles outside of the county seat, four miles from Larkins-

ville. I know A. H. Cotton at Larkinsville, he is a pretty fair man as far as I know, he is a white man. He possesses a good moral character and is esteemed in the community in which he lives. He is an able bodied man. He has never been convicted of any offense involving moral turpitude that I know of. I couldn't tell you if he is over sixty-five, I have been knowing him for a long time, I thought well of him always. I haven't had dealings with him. I don't know whether he is on the jury rolls of Jackson County.

The names of all those others he called to me are not on the jury rolls of Jackson County. I don't know as I have ever seen the jury roll. I have never looked in the box. Their names haven't been accustomed to be in that box. I never looked in that box or at that jury roll. I never helped the Jury Commissioners select the jury roll of Jackson County. I do not know the names of all of the persons on the jury roll of Jackson County. I didn't know any was on it that was colored. I have been in Court around there several times and I never seen no colored men on the jury. I wasn't allowed to look in that box. I don't know whose name was in that box.

I know Mr. W. C. Shelby of Larkinsville. I know his general reputation. I reckon it is all right, I don't know anything about him. I never heard anything against him. Well I haven't heard anything definite against him. I couldn't say he was esteemed. I don't know. I can say all of those names Mr. Chamlee called to me are esteemed. I am supposed to know more about my race than I do about the other race. I do not know whether Mr. Shelby is in the jury box or not. I don't know who is in that box. This ended the testimony offered from the transcript of the evidence on the former hearing. It begins with the affidavit of Marie B. Owens and covers everything down to this point—pages 38 to 86 of the bill of exceptions. The questions and answers

as shown by the transcript of the former hearing was read to the Court in the case at bar. It is not so set out in this bill of exceptions but appears herein in narrative and abridged form.

Saturday, November 25, 1933.

J. V. HARING, was sworn on behalf of the defendants, and testified as follows:

Direct Examination:

My full name is John Vreeland Haring, I am 64 years old, I have made a study during my life time of hand writings, questioned documents, including typewriting, inks and paper. I have been in the penmanship profession for over 40 years, designing leaflets, alphabets for educational purposes, lettering, plain and ornamental, and I have been giving opinions respecting questioned handwriting, typewriting, for over 20 years, and have testified in court respecting these things. I was associated in the beginning with Donald T. Ames, as an employee. Donald T. Ames was the first that devoted his whole time to the examination of questioned documents in America. I might add that I was not employed by Mr. Ames in that capacity. I was employed by him for the purpose of designing alphabets for educational purposes. While employed by him, I did not directly have occasion to study under him. My desk was immediately next to his. I heard conversations pass between he and his clients. I was in his employ when he wrote his book. He was a recognized authority in his books on handwriting and allied subjects. He published a paper called the "Pens Word Journal". I think he published that for nearly 20 years. I left the employ of Mr. Ames twenty-five years ago. Since that time I was employed by the Chairman of the Commission for German Government loans, I should say for about two years. I did other

work in America on questioned documents in relation to the German Government loans. I did work for the Bar Association in New York in the
case, so-called. That was a tremendous investigation that lasted a number of months, and hundreds of documents were involved in that case. I worked for the Legislative Committee, the Industrial Investigating Committee of New York City along the same lines; that included tracing stolen letters in the Mowell case: I have executed the frame work for the Board of Regents for the City of New York, the Board of Education of the City of New York; the Board of Education for New York State; the Board of Education for Newark, N. J.; at Asbury Park I did work there in connection with the petition for a change of form of Government; I did work along the same line for the City of Neptune, N. J.; I have done work in connection with the election records in a Federal case recently in New York, then I made an examination for them. I have testified in New York, New Jersey, Maine, West Virginia, Florida, South Carolina, Massachusetts, Rhode Island and Illinois, and have made examinations for other cases in other states as well. I testified this year in the Lewis Willard case; I testified for the defendant in the State of New Jersey in the Sarah B. Mowell case. I made the examination and withdrew from the case. Later I was subpoenaed for the defendant. I testified for the defendant both in the criminal case, and in the civil case which followed. I was called as a witness in the O. B. Limehouse in a Federal case at Charleston, S. C. I have testified many times for the Federal Court in New York. I performed professional services in the Jackson will case, but I withdrew. I testified in the Duke will case; in the Crocker will case, I simply made an examination. I was employed in a professional capacity in the Hampson-England case. The Nelson Q. Bartley murden case, that went through several months, and in the J. D. Hallen case, Portland, Maine. I was employed for the Radio Corporation of America for making an examination, and in the Russell H. Conwell case, "Acres of Diamonds",

for an examination only, that was in Philadelphia. I was employed in the Van Sickle murder case, in New Jersey, the Patsy De Piero murder case for the prosecutor, by the Thompson Legislative Committee of New York, in the Stole case I testified, in the Harris case I made an examination. I testified in the Halls-Mills case, New Jersey for the prosecutor. I also made an examination in the Kearns-Dempsey case, New York and New Jersey and rendered an opinion. In the Coakley case, Boston, Grand Chapter, O. E. S., New York, I made an examination and testified. I made an examination for the Daily News, a newspaper in New York. I have made examinations for the New York Cotton Exchange in New York. Hon. Guy Sturgess, Attorney General of Maine, he called me on two cases and so did the Attorney General of New York. I worked for the Prudential Insurance Co. for a considerable number of years. I saved the Plate Glass Company considerable money on two occasions. I worked for the New Jersey State Department of Banking. I was in the Starr-Faithfull case for Mr. Faithfull. I made an examination and report. I have also done work for the Mayor of Jersey City, for Oscar Kroph, Chicago. In the Raffa torch murder case, Bronx, New York, I was called by the prosecutor and testified. I worked for Merrill & Merrill, Skowhegan, Maine, and Logan & Grace, Charleston, S. C., that is the O. B. Limehouse case. I had three cases for Johnson, Allen & Bosarge, Bartow, Fla. I have made examinations and testified for The National City Bank of New York. I made an examination for Hillis & Hills, Longansport, Indiana. I was associated in the Abraham Levine murder case at Augusta, Maine. I also have a residence in Florida. In addition to these cases that I have testified about, as having made investigations and also testified, I have also had other matters during years of experience. I have given my whole time to it for a number of years.

I came here at the request of the defense, the request coming through Mr. Leibowitz. I expect to be paid $50.00

a day in this instance. I have at your request made an examination of certain writings, markings and other hieroglyphics in the two volumes now before me, which are in evidence, and which constitutes the jury roll of Jackson County, Alabama, contained in the two red volumes, respectively, on the back of which is the following: "Jury Roll, 1922, Jackson County", one book containing indexes running from 1 to 21, inclusive, each containing an individual alphabetical index, the second book containing an index running from 22 to 41, inclusive, which also contains each an alphabetical index. I made an examination on the pages my attention was called to on these books. I made that examination in that room there (indicating room to witness' right; to the judge's left). I went there because I could have the sunlight. I used a microscope and an ordinary magnifying glass. This microscope is supposed to give high power magnification many times. According to the enlargement I employed in the neighborhood of twenty. Between ten and twenty.

In the volume beginning with number one, and under the letter "T", a name written on the 13th line, the name of "Mark Taylor" written in the book as "Taylor, Mark —Presser, Scottsboro", is written in green ink. Two lines which are apparently red lines were made of "crayon." They are called pencils, irrespective of their name. On this page, part of the name "Mark Taylor" touches the red lines, part of the name and part of red lines touch. I examined that carefully beneath the microscope and the magnifying glass. A portion of that writing, "Taylor, Mark, Presser, Scottsboro" is over the red line, that is to say that a part of that name, a part of the letters of that name, for instance the "T" in Taylor and the "Y" in Taylor, the "R" and "M" in "Mark" go into that red line. They are in the field of the red. The red line was put there before the name "Taylor" was put there. The "P" in "Presser" comes down very close to the red line, but does not get far enough into the red field to determine one way or the other, but in "Scottsboro" the "S", "C" and "O" cross into the field of

the red mark. With reference to the entire entry, "Taylor, Mark, Presser, Scottsboro" my opinion is that entire writing was put on the page after the red lines were drawn. I examined two or three names above the name Mark Taylor, also apparently written in Green ink, and compared the color in the ink with the name Mark Taylor. It was written subsequently, because the last one is down on the line. It is the same nature of ink but just how long after it was put there I am unable to say:

The Court asked the following question:

Q. Can you tell that it was put there afterwards, other than by its location on the page? A. I am unable to answer that question in that one case.

The witness further testified:

I would say those four names were not written continuously. I would say that the three names above "Mark Taylor" were written continuously. There are four Taylors there in the class, and the three first have a very clear type "R"; that is the three at the top. The "R" in Taylor that is in question is differently constructed, more like a letter "I", and is not the same type, indicating to my mind that it was made at another time. In my judgment they were all in the handwriting of the same man. My attention having been called to defendants' exhibit to the testimony of Kelly Morgan, "E. P. K." meaning stenographer, and to the writing there on the eleventh line, "Taylor, Mark, Presser, Scottsboro" I would say that the man that wrote that "Taylor, Mark" is the same man that wrote these four names on the jury roll under the letter "T", including the name of Mark Taylor you are inquiring about.

I have also had my attention directed to some numerals underneath the red line, "3/20/31". They were

written with pen and ink. I have just now looked at these numerals and can not tell you with reasonable certainty whether these numerals are superimposed on the red line, or vice versa. I haven't examined these. This is a very unsatisfactory light. (The witness then retired to jury room as before and returned into court and testifies:) I have made that examination during this interval. I can now state that "3/20/31"—the numerals, are under the red line. (The reference is to Precinct one, under the letter "T", the last name above the red line.)

Turning to precinct No. 3, letter "J", to the name "Rudder, Cam" as entered on that page, that is a deep green ink. On that page that "Rudder, Cam" is entered on, another name is written in ink, "Jones, J. T.". My examination discloses as to the color of that ink that it is a much deeper color than the Jones name, the "Rudder" name is a much deeper colored green than the Jones name. It is the same way with the margin; the margin corresponds with the Jones, and the ditto mark beneath there corresponds with Rudder out in the residence column. There being a difference in the ink would suggest to me that they were done at different times. I cannot tell whether these names were written with a fountain pen. That is difficult to know, on account of the flow of ink. Sometimes the ink doesn't flow freely, and then again it does, it would depend somewhat on the condition of the pen. There are certain parts of the letters of the name "Rudder" that touch the red line, that is a part of the staff on the left hand side of the letter "R" goes into the field of the red line. It is written over the red line, on top of the red line. Then in the "D" a part of the bottom of the "D" touches the red line. Then in the name "Cam" the *a*, part of the *a* touches the red line. From my examination I would say that it is written over and after the red line. I mean the red line was there first. All of the parts of the letters that touch the red line I have mentioned.

Proceeding now to the same name, "Rudder, Cam", under the letter "R", same section, in this instance, the letters do not touch, "R-U-D-D-E-R" are away from the red line; also in the Cam, but under the caption "Occupation" in "Merchant" there, the "A" in "Merchant" goes into the field of the red line. In my opinion it was written after the red line on the paper. That means it was written over the red line, or superimposed on it. With reference to the five other names, well, the space seems to be restricted there, and the two names immediately above descends down and touches the blue printed line, while in this question one, the "Rudder" is up and away from the printed line a considerable distance, so that the adjustment to the column is out of balance with what we find of the other signatures there. The color is the same, but a deeper, more distinct green. I would say the same ink did not write the last name that wrote the five names that precede it. It is a deeper colored ink, made at another time and were not simultaneously written, not a continuous writing. In my experience I find that the same man writes with the same uniformity each time. To a certain extent it is typical.

Turning to Precinct Ten, in this volume, under the letter "S", and I call your attention to the name, "Snodgrass, K. D." That is also in a space immediately above the red line. I have made an examination of that in the same manner that I made of the other names I testified about some parts of the letters intersect the red line. The name was written after the line was ruled,—over. Parts of that name, "Snodgrass, K. D." and superimposed the red line, the line connecting the "N" to the "O." That is in a deeper colored ink than the writing above. It is a deeper green, and the name is written way over the base line as compared with the three signatures, above. The signatures above approach the base line, and are comparatively the same; typically the same. I can tell by comparing the character of these several specimens of writing,—from my experience as

a hand-writing expert, with reasonable certainty, whether or not there was a conscious attempt on the part of the writer to avoid that red line in the body of that writing. My opinion is the arrangement of the name, adjusting itself to the base line, as compared with the several names above, and further, there is a different "S" in this questioned signature. The loop of the "S" is larger and the whole signature out of slant, indicating it was made at a different time and not contemporaneously with the others. I know he had that consciousness by the way the signature adheres to the base line, different from those above. It indicates that either the mind or muscle had a different process than what would have been in writing those above (exhibit to Morgan's testimony was handed to witness). Line 16 adheres to the base line the same as in the signature that is in question. There is nothing to indicate to my mind that he had any particular purpose in view while he was writing that name on the exhibit. This was written naturally here compared with the five or six signatures on this column here. There is no red line on this request writing. I do not know whether or not when the man wrote this exhibit request, he had the book in front of him. He didn't copy the questioned one. He got closer to the other. I do not think he copied any of them. I can say with reasonable certainty that the last name is not written naturally. It indicates to me the appearance of what we might term guarded writing. I am speaking of the last name, the questioned one. The one on the exhibit is not guarded. That is in harmony with the rest. Many things have an affect on writing, particularly when a man is writing by request. This, however, seems to be natural. I can tell that it is natural by comparing it with the writings in the column here. Turning back to the name "Mark Taylor, and looking at the ink that is written with and comparing that with the ink Cam Rudder, under the letter "J" and Cam Rudder under the letter "R", I can tell with reasonable certainty whether these names were or were not written with

the same ink. I have looked at that carefully,—yes. They appear to be written with the same type of green ink, but whether they were written at the same time, it is impossible to say.

Precinct 14, the letter "L", and the name of "Larkin, Pleas". That "Larkin, Pleas" was written after the red line was put there. I come to that conclusion on account of the passage of part of the letters of the name into the field of red of the ruled lines. I have compared the ink, the color of the ink with the ink used in writing the three names that precede it. I can state with reasonable certainty whether or not they were written with the same ink. As to being green ink it is the same, but the green ink in the questioned ink is a deeper green. The "K" in Larkin, a part of that crosses the field of red; the capital letter "P" touches in places, and a little of the bottom of the "H" touches. In the questioned one, Larkin, the "L" is followed by an "A", but the pen was lifted before the "A" was started. In the name immediately above, the line is continuous, the "L" runs into the "A" connectedly, and in the names above the capital runs connected into the next letter, and in this questioned name, it doesn't. The pen is taken off the paper, and then the next letter, "A" was started.

Turning to Clemons, Daisy, precinct No. 21, under the letter "C". The tail of the "Y" in Daisy intersects the red line. It is in green ink and is under the red line. I did not know that is the name of a white man. Proceeding to Garland, under "G" in precinct 21 there is some contact with any portion of the name Hugh B. Garland with the red lines, just the tip end of the staff of the "G". I cannot determine whether the red line covers the ink or not.

Proceeding to the letter "M", precinct No. 21, Travis Moseley. I am inclined to the opinion that name Travis Moseley was written by the same hand that wrote the ten names preceding it, comparing the name Travis

Moseley, and the other nine or ten names that precede it, in that column: In the first place it is written with a deeper ink, it is written with green ink, but some deeper ink, and the particular ones, outside of this questioned one, harmonizes as to color among themselves, being a lighter green, and as to the arrangement on the line; these preceding names are very typical in their arrangement in the column. The last one, the one in question seems out of harmony in the respect that it is over to the right further, it is smaller in size, and written with a different pen, at least at a different angle. I cannot tell with reasonable certainty, from the character of the writing, whether there was a conscious effort on the part of the writer to write just that way, other than what I have already stated. Going to the red line, "M" the capital letter "M" touches it, also the small letter "O" and the "Y" in Moseley but the red line I am looking at, there are two red lines, and the top red line that these letters touch is very, very light, and I see no way of ascertaining whether they are over or under. The "Y" crosses the lower red line. I mean that it is on top of it, that is my opinion of it. I made a very careful examination down below there. The red lines were put on the page before Travis Moseley. I have no way of telling whether the two red lines were made at the same time or not. With regard to the numerals "3/20/31", the date line there, no portion of the name "Moseley" comes in contact with any of the numerals. But they do with the lines separating the numerals, the one separating the 20 from the 31. The tail, or extension of the "Y" in Moseley comes in contact with the lines separating the numerals. They are in ink and the letter "Y" in Moseley is in ink. I have examined these particular figures. The "Y" covers the date line. I can't see that with the naked eye. I can't answer for any one else. There is no question about it in my mind, because as the "Y" that intersected that date line came in contact with the date line, it cleaned off some of the ink that was on that line

originally. I can state with reasonable certainty that the name Travis Moseley was written in there after the date 3/20/31. There is no question in my mind at all.

Turning to the letter "S", precinct No. 21, and the name "Hugh Sanford". I have examined that name. I don't know the color of the man. I have examined this record. The letter "F" in Sanford, the lower staff, is through the red lines, it is in the same field. The green writing of the names is over the red line. It comes in contact and over in the Hugh, and the "G", the "D" in Sanford enters the red field, the "H" in Hugh enters the red field. In Janitor the letter "J" is over the red. The ink is a little heavier than the other writings. The capital "S" in Sanford does not correspond with the seven or eight "S's" in the names immediately above. It is a different sort of an "S" and is not in harmony with the "S's" preceding and immediately above it. Writing at a different time,—that with the other things I have been over in combination would indicate it. But the ink being heavier than the other, alone, would indicate a different time of writing. Not so much to the age. It is the same kind of ink, but a little deeper in color. Changing pens, or filling the pen might make a difference. The older the ink, the darker the writing would be, because the ink would be thicker.

Turning to precinct No. 24, letter "R" to the name Roscoe Ryan. I find that the "R" in Ryan, and the "Y" in Ryan and a little of the "A" and part of the "N", and the "R" in Roscoe and the second small "O" in Roscoe—no, I didn't make any note of that. I thought that I had examined it. I am inclined to the opinion that the green is over the red. I made no record of this name when I was in the side room.

With reference to Travis Moseley, it is demonstrated to me beyond a shadow of a doubt that the name referred to was written after the date 3/20/31 was en-

tered in this volume because of the fact of the meeting of the ink of the name Moseley and the meeting of the ink of the date line 3/20/31 whereby the ink of the name crosses the line and over it, indicates to me conclusively that the date line was there before the name of Moseley. The date line does not intersect the red line.

Under the court's instruction witness then retired and made examination of certain names in certain precincts as follows: Precinct No. 21, "B", Ben Berry; Precinct No. 21, "J"; Precinct No. 16, "T"; Precinct No. 26, "N" and "R"; Precinct No. 27, "B"; Precinct No. 28, "R".

Questioned by the court the witness testified:

In Precinct No. 21, "B", the red lines are over the bottom part of the "Y" in Berry. In Precinct 21, "I", the bottom of that "G" in Spring, is over the red lines. "J" in Precinct No. 21, that date line there in my opinion the red lines are under these marks, the date was written after the red lines were put there. Precinct 16, letter "T", in my opinion, in the word Spring, on that page the red lines are over the tail of the "G". Precinct No. 26, letter "N", the date line is over the red lines. In other words, the red line was there first. Precinct No. 26, letter "R", the date line is over the red line. Precinct No. 27, at the letter "B" the "G" in Spring is over the red line. The writing of the date line is made after the red line was put there. In other words, over the red line. Precinct No. 28, letter "R", the date line is that over the red line. The writing is over the red line. The date was written after the red was put there. The line was there first.

Re-direct Examination:

I looked at Roscoe Ryan, precinct No. 24, letter "R", again while I was out. That is one I am uncertain

about, that's the reason I didn't make note of it before. The "Y" crossing the red. I think the red crosses it, but I didn't find enough to tell me definitely. I am inclined to the opinion that it was put there after the red was there. I am not definite about it.

Mr. Leibowitz then stated: Your Honor, last night subpoenas were issued to six or seven negroes whose names are on this jury roll, Exhibits "A-1" and "A-2", we have discussed these men with the expert. Your honor has ruled, I don't think the record shows it,—that you will not hear further testimony on these two volumes.

The Court then said: I closed that last night.

Mr. Leibowitz answered: What I propose to show by these witnesses is that they are familiar with every negro in Jackson County and that they are prepared to prove that outside the names that have been disputed that there are no names of any negroes on the rolls of Jackson County, and that there were no names of any negroes on the rolls of Jackson County for a period embodied in these jury rolls, beginning in 1922. I merely put that on the record that your honor may be apprised of the proof tendered, so that the record may be kept clear.

The Court said: Suppose I pass on that. I am not going to wait for you to get these witnesses here.

Mr. Leibowitz asked: Your Honor told me you would not hear them?

The Court ruled: And I'll tell you exactly why. Under the law it was your duty to come to court on Monday morning prepared to submit whatever preliminary motions you desired, and the evidence supporting them. The law made that your duty. You cannot be taken by surprise, because in the testimony that was

taken on this same motion before Judge Horton last Spring, March, I believe, there was therein testimony, positive testimony, by one of the commissioners, jury commissioners, that there were negroes on the Jury Rolls of Jackson County. That gave you notice of that fact, and it was your duty to be prepared to meet it. Therefore, I decline to proceed further along that line.

Mr. Leibowitz excepted to this ruling.

Mr. Leibowitz stated further: Now, your honor, we have had subpoenaes issued for Judge Hawkins, the sheriff of Jackson county, and the judge of the probate court, who had these books in custody, and they have failed to answer these subpoennes, and I cannot proceed to close my case on this motion without the testimony of these witnesses.

The Court stated: In reply to that I will say that on Thursday morning when this motion was called these witnesses did not answer, and I offered to give you attachments for all of the witnesses you wanted, and no attachments were called for. In addition to that you said that you wouldn't ask for attachments; that you would attempt to reach the witnesses on the telephone, as I understand it.

Mr. Leibowitz remarked: May I state in connection with that, your honor, that I did not propose to issue attachments for a Judge of any court in Alabama; we are asking your honor's indulgence now so that the hearing may be completed with these witnesses, we want to endeavor to procure their attendance here without the issuance of any bodily attachment.

The Court ruled: I can't do that, for the reason that at the time on last Thursday, when the motion was called up, I informed you then that Judge Hawkins said that he had a sick child and didn't want to leave that sick child, but if absolutely necessary, to let him know and

he would undertake to come. I conveyed that information to counsel for the defendants at that time.

Mr. Leibowitz then took exception to the court's ruling, most respectfully, on the ground that the court has refused the proof tendered and mentioned, and has refused defendants an opportunity, at this time, to counsel to bring into court, or endeavor to bring into court, these witnesses that counsel for defendants deems necessary to use. That is the exception, your honor, and I think that's all. The facts are that on the day before the last witness, J. V. Haring, was examined the defendant completed the examinations of all his witnesses present. He then asked the Court not to close the hearing, that he had an expert witness on his way from New York. The Court then adjourned until the next morning when the expert witness, J. V. Haring, appeared and at the request of the defendant court recessed for from one to two hours for the witness to examine the record. When this witness completed his testimony then the defense asked for further continuance so that he could get other witness to court—then follows the proceedings recorded on pages 161 to 163 of this bill of exceptions immediately following Haring's testimony.

This was all of the evidence on the motion.

The Court then rendered its opinion on motion to quash indictments as follows:

Gentlemen:

The question here is whether or not the officers of Jackson County, whose duty it was to prepare a jury roll and to place the names of qualified citizens in the jury box, have declined and failed to place the names of any colored men on the jury rolls or in the jury box, because of his color or race. That is the chief question. A good deal of evidence has been taken and I have tried to listen to and understand all of it. In that was evidence submitted to me, or read to me, that was taken

on a similar motion in this case before Judge Horton last spring, and there was at least one witness, that I recall, if not two witnesses, that testified positively then that there were names of the colored race on the jury roll, and were on that jury roll at the time the grand jury was drawn that returned this indictment. There has been a good deal of evidence offered that was legitimate, to meet that statement of these witnesses, the weightiest of which, in my judgment, is the testimony of several witnesses that they had not, for many years, if ever, seen a colored man on a grand jury in that county. That evidence, if believed, and I have no reason to disbelieve it, in the absence of anything in the record attacking their truthfulness and honesty; if that is to be believed, as I see it, that in and of itself would create a presumption, in my judgment, from which might be drawn the conclusion that the colored race was kept out of the jury box. But that is a presumption only that the law considers, and is subject to be met and explained, and certainly it is explained to some extent when a witness, whose sworn duty it was to prepare the roll, and to examine and ascertain who went on that jury roll, says emphatically that there were negroes on the roll at that time. Now, the defendants have offered some more evidence in support of that proposition. In undertaking to develop the evidence on this motion they have introduced in evidence the jury rolls of Jackson County, and they tell us on the stand by witnesses,—their witnesses,—who examined the records,—they have pointed out several names on that jury roll that they swear were colored men. Ordinarily when a man places a witness on the stand to testify for his cause, he vouches for his truthfulness, and ordinarily he is not permitted to impeach his own witness. The defendants contend further, in support of their proposition, that there is some suspicion of fraud,—that if the legal effect of it,—in the manner of placing the names, or of named negro jurors on the jury roll, their first contention being, and that I believe is in each instance, the name is

found on the last line immediately above the two red lines drawn across the page, and that would be persuasive if each name on the jury roll so appearing was shown to have been a negro, but the record fails to show that, but on the contrary it shows about as many white men put in that blank space as there are negroes, and that leaves that phase of it somewhat uncertain. Then one of the chief contentions, and it is an important one, in undertaking to establish fraud or an illegal act of somebody the evidence centers around the two red lines that are drawn across the pages of the jury roll, consisting of two very large volumes. As a basis for that contention, the defendants placed on the stand a witness that testified that he assumed office in February or March of 1931. Now, I find in reading the testimony of somebody by that same name, that was offered on the last hearing, that witness said 32 names. I take it for granted that was a typographical error. That witness says this, at the beginning, that the old board turned over to the new board, of which he was a member, these jury roll books, but that before they did anything the clerk placed the red lines on the jury roll. This same witness, however, later on in his testimony, stated that he did not see any of the red lines placed on the jury roll, so that leaves that question in a state of uncertainty. But proceeding on that theory, a while. The defendants claim by their evidence that they have proved that the names, at least the names that are under controversy, in each instance, above the red lines, were in certain instances,—that parts of the letters of their names extend into the red lines, and that so far as the negroes are concerned, that parts of their names are *over* the red lines,—that is, written afterwards, which, standing by itself, if the red lines were put there after the new board came in, would be rather strong evidence that there was something wrong, and that the name was placed there purposely and wrongfully, and until the expert took the stand, I was in grave doubt about that matter. But the expert has made a different conclusion greater in several instances. Right at the

beginning of his testimony he testified that the date line that was below the red lines which, under defendants' contention and on which they must stand on that point, was that that date line was written there after the red lines were drawn, but the expert witness testified that in his judgment the red lines were superimposed on that date line. That of itself is enough to create a grave doubt as to when the red lines were placed there. But following the expert up, that shows that sometimes they would be on top and sometimes underneath the red lines. If that is true, what could be said as to when the red lines were placed there? Can any one, with any degree of certainty state just when the red lines were placed in those books? As I see it, there can be but one conclusion reasonably drawn from it, and that is that they were not all placed there at the same time. An examination of the record shows, I think, anywhere from five to seven hundred red lines in the books. No witness appeared here to testify to putting the lines there, or when they were put there, except the first witness, who stated they were put there when they first took charge of the books. Then, later, he qualified his testimony from my view point. Then again, there is a date on the red lines, and that is where the whole thing hinges. There is an entry above the red lines that is stated to be in the handwriting of the former clerk, made before the old board went out, dated in March, 1929, showing when the name was put there, that date is on the jury roll, and the expert says that the red lines went over that entry. I don't see how to reconcile any such theory as that. Fraud is a thing that has got to be proven. There must be some evidence sufficient to reasonably satisfy the court that there was fraud. I don't think I would be authorized to presume that somebody had committed a crime, nor would I be authorized to presume that the jury board, being sworn officers had been unfaithful to their duties, and allowed the books to be tampered with. They are required to be safely kept in the office of the probate judge, and that would cast a reflection on the probate judge, an-

other sworn officer whose duty it was to keep them at that time. That answers that part of the defendants' contention, and being answered, as I see it by the evidence, I must conclude that there were, at the time the grand jury was drawn that found this indictment, names of colored persons on the jury roll, and I overrule the motion to quash the indictment.

Mr. Leibowitz on behalf of all the defendants excepted to the court's ruling, and stated: I want to get in my exception, the failure of the court to consider the testimony of Kelly Morgan to the effect that when he wrote last in these volumes, there were no red lines on the volumes. I think your Honor omitted that.

The Court said: I am satisfied with my ruling.

The Court answered: These jury rolls are ordered into the custody of the clerk and safely kept until the further order of the court. They won't be removed without consent of counsel. They are impounded.

This was all on the motion to quash the indictments.

Motion for change of venue was filed by the defendant in court, and after reading same Mr. Knight, Attorney General, stated: "The state denies each and every allegation of the motion" and stated that he was ready to proceed to a hearing on the motion. The defense rests on the denial of the state.

WHEREUPON, the court stated to defense counsel to proceed to read the motion to change the venue, together with supporting affidavits.

Mr. Brodsky: We want an exception to your Honor's ruling that counsel read the motion to change the venue and the affidavits, on the ground that the publication of the names therein will further aggravate the feeling and prejudice against the petitioners, and serve no good purpose.

The Court: Your motion is overruled, and you have an exception.

Mr. Brodsky: We ask your honor to instruct the stenographer to make note that the court room is crowded during the period of the reading of the affidavits.

The Court: I decline to do that. This is a public trial, and give you an exception.

THEREUPON, Mr. Brodsky proceeded to read the motion for a change of venue, and supporting affidavits, which were as follows:

IN THE CIRCUIT COURT OF ALABAMA

IN AND FOR MORGAN COUNTY.

No. 1,977.

STATE OF ALABAMA

against

HAYWOOD PATTERSON, OZIE POWELL, WILLIE ROBERSON, OLEN MONTGOMERY, CLARENCE NORRIS, CHARLEY WEEMS, and ANDY WRIGHT.

MOTION FOR CHANGE OF VENUE.

Your petitioners, who are defendants in the above styled cases, come and make application to the court to have their trial and trials now pending in the Circuit Court of Morgan County, Alabama, transferred and removed from the Circuit Court of Morgan County to the Circuit Court of Jefferson County, the same being the

nearest county to Morgan and Jackson Counties where a fair, impartial and unbiased trial of your defendants may reasonably be expected to be had, and your petitioners allege as follows:

1. Your petitioners and each of them are negroes of the African race and citizens of the United States.

2. On or about March 25, 1931, your petitioners were taken off a train at Paint Rock,, Jackson County, Alabama, by a large group of officials and citizens and accused of the crime of allegedly forcefully ravishing two white women on said train.

3. On or about March 31, 1931, your petitioners were indicted by a special grand jury of Jackson County in joint and separate indictments, for allegedly ravishing one Victoria Price, one of the aforesaid two women on aforesaid train.

4. Subsequently and six days later and during the days of April 6, 7, and 8, 1931, your petitioners were tried on said indictments in the Circuit Court of Jackson County, located at Scottsboro, before Honorable Judge Hawkins in four separate trials, and all were found guilty and sentenced to death except the defendant Roy Wright, as to whom there was a disagreement by the jury.

5. Thereafter motions were made for a new trial of these defendants that were convicted, which motions were denied. Thereafter appeals were taken from the aforesaid judgments of conviction and sentences of death and the denial of the motions for a new trial to the Supreme Court of the State of Alabama. The said Supreme Court affirmed all of said convictions except the conviction of Eugene Williams who was held to be a juvenile. Chief Judge Anderson of the said Supreme Court dissented said affirmances in a written opinion.

6. Thereafter your defendants, except Eugene Williams and Roy Wright, moved in the Supreme Court of the United States for writs of certiorari to review their conviction, which writs were granted, and upon said review, the Supreme Court of the United States reversed the judgments of conviction because of the denial to your petitioners of due process of law under the constitution of the United States and the amendments thereto, and remanded the cases for further proceedings as more fully appears from the opinion of the United States Supreme Court.

7. Thereafter in March, 1933, Honorable A. E. Hawkins, Judge of the Circuit Court of Jackson County set the said causes of your defendants for retrial in said county. Whereupon your petitioners moved on March 6, 1933, before said judge for a change of venue from the Circuit Court of Jackson County to the Circuit Court of Jefferson County, on the grounds that petitioners could not and would not secure a fair trial in Jackson County or any of the surrounding counties, the said Jefferson County being the nearest county where defendants might procure a fair trial. The court denied petitioners' application for a change of venue to Jefferson County, but granted a change of venue to Morgan County, to which denial the defendants duly excepted. Your defendants now renew their exception to the aforesaid denial. Your petitioners herewith make the aforesaid motion and the exhibits thereto attached a part of the within motion as if fully set forth herein again at length.

8. Thereafter the trials of your defendants were set for March 27, 1933 in the Circuit Court of Morgan County before Honorable James E. Horton, Judge of said Court. Proceedings commenced on said day with a motion of defendants to quash the indictments and indictments found against them, because of the arbitrary and unlawful exclusion of negroes from the grand jury, but after hearings thereon, said motion was denied. Thereupon Honorable Thomas E. Knight, Attorney General of the State

of Alabama moved for a severance of the trial of Haywood Patterson, which motion, over objection of the defendants, was granted by the court. Thereupon the trial of said Haywood Patterson was set for and opened on March 30, 1933, with a motion by said defendants to quash the venire of petit jurors in his case on the ground of arbitrary and unlawful exclusion of negroes from said venire, and after hearings had thereon said motion was denied by the court. The actual trial of said Haywood Patterson thereupon commenced on April 3, 1933, and ended on April 9, 1933, when the jury brought in a verdict of guilty and imposed the sentence of death. Judge Horton set the date for execution at July 10, 1933.

9. Thereafter Honorable Thomas E. Knight, Attorney General for the State of Alabama, asked the court that Charley Weems be the next defendant to be tried. Judge Horton thereupon set the date of trial of said Charley Weems at April 17th, 1933 over objection of the defendant.

10. Thereafter on April 17th, 1933, the date set for the trial of Weems, Judge Horton of his own motion adjourned the said trial sine die on the ground, as stated by Judge Horton, that said defendant could not procure a fair trial at that time, as is herein more fully set forth and as appears from the statements of Judge Horton in the record of the State of Alabama against Charley Weems, a copy of which is hereto annexed, and marked Exhibit "A".

11. Thereafter the defendant Haywood Patterson made and filed a motion before Honorable Judge Horton to set aside the judgment and conviction and sentence of death and to grant him a new trial. Judge Horton granted this motion in a written opinion in the record of the State of Alabama against Haywood Patterson, heretofore filed with the clerk of the said Circuit Court. The said motion and amended motion for a new trial, with the affidavits thereto attached and the opinion of

the court, are made a part of this motion as if fully set forth herein at length.

12. The cases of all your defendants are now coming on to be held in the Circuit Court of Morgan County before Honorable Judge W. W. Callahan who has fixed the date of arraignment at November 20, 1933 and the date of trials for November 27, 1933.

13. Your defendants allege and state that ever since the arrest of your defendants in March, 1931, through their first trial and the second trial of Haywood Patterson and up to the present time, their cases have stirred and continue to stir the deepest and profoundest hatred, prejudice and bitterness against them and their attorneys. This hatred and prejudice exist not only by reason of the character of the charge,—the heinous crime of rape by nine negroes of two white women,—but also because of the determined fight by the defendants and their counsel on the question of the exclusion of negroes from Grand and Petit Juries, and further the nation—and world-wide interest and sympathy in the cases of your defendants which many of the citizens of Alabama interpret as an unwanted and uncalled for interference with their own affairs.

14. Your petitioners will not here again repeat the circumstances of hate, prejudice, coercion and animosity surrounding the first trials of your defendants in Scottsboro, but will respectfully refer the Court to the ample statement of the same appearing in the records of the United States Supreme Court in the cases of Haywood Patterson, et al., versus State of Alabama and further to the motion for a change of venue and the affidavits attached thereto heretofore made and filed before Honorable Judge Hawkins in Jackson County on March 6, 1933. The statements and allegations therein made were fully confirmed by the action of Judge Hawkins in changing the venue of the trial of your defendant from Jackson County to Morgan County as aforesaid.

15. Your petitioners allege and state that they cannot and will not obtain a fair and impartial trial or trials in Morgan County and that their lives, the lives of their counsel and of witnesses for the defendants will be and are in grave danger if the trials of your defendants are held in Morgan County, for the reasons hereinafter set forth.

16. That all the proceedings against petitioners heretofore had in Morgan County, including the hearings on the motions to quash the Grand Jury and the venire of the Petit Jury, the trial of Haywood Patterson and the motions and hearings had subsequent thereto were surrounded and enveloped in an atmosphere of extreme hatred, prejudice, coercion and animosity, and occasioned by acts of threatened violence by the white citizens of Morgan County against the defendants and their counsel.

17. That by reason of the aforesaid, which was apparent from the very commencement of the trials in Morgan County, and even before, the sheriff of Morgan County petitioned the Governor of the State of Alabama for the attendance at the trials and in and about the jail where the defendants were confined of a contingent of the National Guard to supplement the local police forces.

18. That throughout the aforesaid hearings and trials, a detachment of the National Guard under Captain Joseph Burleson, from its headquarters in Hartselle, Morgan County, Alabama, equipped with machine guns, rifles, tear gas bombs, riot guns and other armaments of warfare attended by direction of the Governor of the State of Alabama.

19. That during the course of the trial of Haywood Patterson aforesaid, a group of over 200 citizens of Decatur congregated at a meeting of the Ku Klux Klan in the very City of Decatur where said defendant was on trial, for the purpose of planning an attack upon the

defendants and attorneys for the defense. This failed of being carried out solely through the vigilance of officers of the law and the plea of Sheriff Davis, who presented himself at the meeting.

20. On similar occasions during the course of the aforesaid proceedings in Morgan County, citizens of the County and the surrounding countryside were stirred and aroused to active hostility against the defendants and their attorneys by the burning of fiery crosses at night in the usual manner of signals of meetings of the Ku Klux Klan.

21. That violence against the defendants and their attorneys was actually attempted to be carried out during aforesaid proceedings in Morgan County by a series of marches by organized mobs from the nearby towns of Scottsboro and Huntsville, Alabama. These nefarious attempts were halted on each occasion solely by the timely interference of the State militia, the sheriff and his posse.

22. That so real, palpable and all-pervading was the atmosphere of hostility and animus against the defendants and their counsel during the aforesaid proceeding, that on at least two occasions during the trial Judge Horton deemed it necessary to deliver long addresses to the audience and through them to all of the citizens of the county and adjoining counties, pleading with them to avoid violence and to keep peace and warning them that should they take any hostile action against the defendants and their counsel, it would be met with the armed resistance of the officers of the law.

23. That in spite of the repeated warnings of the court and the attendance of the military, the lives and safety of the defendants and their counsel were openly and continuously threatened and seriously endangered throughout the aforesaid proceedings in Morgan County.

42. That in the early part of the proceedings in Morgan County, aforesaid, a pamphlet was widely and openly circulated and sold in and about the Court House, the Town of Decatur, and the surrounding counties. This pamphlet was entitled "The Unpublished Inside Story of the Infamous Scottsboro Case", by J. Glenn Jordan, allegedly "containing all the sensational evidence introduced at the trial", and was full of misrepresentations, falsehoods, incitations and incendiary statements against the defendant and all those connected with the defense. That on the very first page in this pamphlet appeared a photograph of Victoria Price and Ruby Bates, over which was a glaring headline "VICTIMS OF NEGRO RAPISTS." On the last page of said pamphlet was a "Publisher's Note" in which was stated the following:

> "This little book is being offered to the reading public as an answer to the malicious and libelous propaganda of certain Communistic organizations which are attempting to capitalize on the conviction of the seven negro *fiends* who were *unquestionably guilty* of the crime with which they were charged." (Italics our.)

Quoting from one of the concluding paragraphs of the said pamphlet is the following:

> "• • • *then Alabama and the world will finally see justice claim its own—will see the negroes receive their just deserts—death in the electric chair.*" (Italics ours.)

That the sale of these pamphlets aroused and heightened the animosity of the citizens and the prospective jurors who were to try these capital cases against the defendants, tended to convince them before the trial of the guilt of the defendants, and made it impossible for the defendants to procure a fair and impartial trial. That

although, upon learning of the sale of these pamphlets, the court did reprimand persons who sold the same and cautioned them against its further distribution, the prejudice engendered by the dissemination of the said publication or booklet was such that no admonition on the part of the Court could remove the same in the slightest degree. Upon information and belief that said pamphlet still circulates in Morgan County and has been read by many citizens of said county who will be the prospective jurors in the forthcoming trials of your defendants.

25. That during the course of the aforesaid trial in Morgan County the Negro citizens of Decatur and the surrounding country were in terror of their lives for the reason that they knew that should the defendants be acquitted, there would be a wholesale attack upon the Negroes in the County. For that reason, the Negro churches and homes were kept in darkness after nightfall. That the two hardware stores in the town of Decatur were completely emptied and sold out of arms and ammunition purchased by white citizens who were preparing for armed attacks.

26. During the selection and impanelment of the trial jurors in the aforesaid trial of Haywood Patterson, while counsel for the defendant was properly and lawfully interrogating the veniremen, one Morgan, a member of the said venire, walked through the court room in the enclosure where the Judge, counsel and others properly there were seated, and in a loud and boisterous manner complained to the Court that counsel for the defendant had no right "to instruct the jury as to the law" and that "we in Morgan County have been in the habit of receiving our law from the Court" all this delivered in such a manner as to prejudice and incite many of the other veniremen seated in the court room absolutely within the hearing of this utterance made by the said Morgan.

27. That during the striking of the aforesaid jury, the Sheriff of the County, Mr. Davis, sat beside Wade Wright, solicitor of Morgan County, and counsel for the prosecution, and apparently took active part in advising, counselling and aiding the prosecution in the selection of the trial jurors who were to hear the evidence in this case, all done in the presence of the veniremen seated in the body of the court room. That this insidious association of law officer of the State with the attorneys for the prosecution was highly improper and tended to convey to the jurymen and citizens and onlookers that the Sheriff of the County was endorsing the prosecution as against the defense. That the effect of the conduct of the Sheriff as stated became more insidious by reason of the fact that most of the members of the said venire and of the prospective jurors in the coming trials of your defendants were and are personally known to him and many of the same were close and intimate friends of the said Sheriff.

28. The conduct of the attorneys for the prosecution during the aforesaid trial in Morgan County was calculated to and did inflame and incite the minds of the jury selected to try this case to base their verdict upon race prejudice and sectionalism as will appear from the incidents hereinafter referred to.

a) The Attorney General of the State of Alabama, Thomas E. Knight, Jr., Chief of the attorneys for the prosecution, stated in open court that he refused to address a Negro witness as "mister," explaning that "he is not in the habit of doing that."

b) That the conduct of the Attorney General towards the witnesses for the defense, expecially those who were Negroes, was uniformly contumacious, sneering and insulting and calculated to arouse the basest prejudice in the minds and hearts of the jurymen towards the said witnesses and towards the defense for whom they testified.

c) That during the course of the trial, while one J. Arthur Woodall, as witness for the prosecution was on the witness stand, testimony was elicited from the said Woodall that he found an knife and fifty cents in currency on the person of one of the co-defendants and that the said co-defendant admitted that he had taken the same from Victoria Price, one of the witnesses for the prosecution. The Attorney General, who was seated at the prosecution table at the time this incident occurred, jumped from his seat, clapping his hands in applause of the witness's testimony and leaped in glee from the table, a distance of approximately fifteen or twenty feet through a door that led into the witness chamber adjoining the court room. A motion for a mistrial was made on behalf of the defendant, which was denied by the Court and exception was duly taken.

The Attorney General returned to the court room and apologized to the Court, to the jury and to counsel. However, the prejudice and animus created by such unseemly conduct on the part of the chief prosecuting officer of the State of Alabama was such that no apology on his part could serve to rectify the harm already done.

d) That during the entire course of the proceedings and trial, as will more fully and definitely appear from the minutes taken by the court reporter, the conduct of the prosecution was so calculated to and did inflame and incite passions of race hatred and sectionalism and prejudice in the minds and hearts of the jury and the citizens of Morgan County.

e) That upon the arguments made to the jury in summation by the Solicitor H. G. Bailey, he continuously referred to the clothing of one of the witnesses for the defense as having been purchased in New York and made other suggestions and insinuations concerning the State of New York and its residents, all with a purpose of inflaming the minds of the jury and the citizens of Morgan County towards any person connected with the case who

lived in New York, knowing full well that it was common knowledge that both Mr. Leibowitz and Mr. Brodsky of defense counsel were residents of the State of New York.

f) That the said Solicitor H. G. Bailey also stated the following in his argument to the jury:

> "If you let this man (pointing to Patterson) go free, every white father in the State of Alabama will tremble in his bed for the safety of his daughter,"

thus appealing to the lowest prejudice and superstitions of the jury and the citizens of Morgan County.

g) That there then followed the argument of Mr. Wade Wright Solicitor for Morgan County and one of the staff of the prosecution, who in a tone reverberating through every nook and cranny of the court room shouted:

> "Show them that Alabama justice cannot be bought and sold with Jew money from New York."

Further in his argument, he shouted, shaking his hands in alleged imitation and burlesques of the Jewish manner of gesticulating speech:

> "That man Carter—Carteripsky as he is now—is a new kind of man to me. Did you watch his hands? If he had been with Brodsky another two weeks he would have been down here with a pack on his back trying to sell you goods. Are you going to countenance that sort of thing?"

So stirred was the audience in the court room that from among them one of them was heard to shout, "No!"; all this is in the presence of and audible to the jury and audience. Frequently during his speech, "Amens" and murmurs of approval or anger, as the occasion demanded could be heard in the court room.

h) Attorney General Thomas E. Knight, Jr., in his argument to the jury referred to the defendant as "that thing." He stated that he did not deem it necessary to "call a Negro to corroborate a white witness." He made repeated emphasis upon the fact that a witness for the defense, one Dr. Reisman, came from Chattanooga Tennessee, and "were they (the jury) going to believe a Chattanooga doctor as against a doctor that came from their home town (Decatur)" thus appealing again to every unholy and base passion that could possibly emanate from the mind or heart of man.

29. The aforesaid allegations of hatred and prejudice attending the entire proceedings in Morgan County and the impossibility for the defendants to procure a fair trial in Morgan County were fully confirmed by the action of Judge Horton on April 17, 1933, in continuing the case of Charlie Weems, the next defendant to be tried, "until such time when in its judgment a fair and impartial trial may be had." Honorable James E. Horton, Judge of the Court in announcing the continuance, made a lengthy statement setting forth the reasons therefor. In his opening remarks, Judge Horton stated;

> "The nature of these cases, being a case where a negro is accused of the rape of a white woman, is such as would naturally excite resentment, and it is always difficult, even under the most favorable circumstances to obtain a fair and impartial verdict."

Further on in his statement, Judge Horton said:

> "On account of certain influences, many of which to this court appear sinister, and are actuated by a desire to stir up and foment strife between the races in the South it has been difficult to try what are known as the Scottsboro cases upon the real facts. I am not now passing judgment upon the verdict in the case already tried. *I know the Court*

> *had great difficulty in preventing extraneous influences having some effect on the jury.*" (Our emphasis.)

Judge Horton following the above statement by giving his opinion that "these influences (were) still existing" and "the public mind still disturbed." Judge Horton then referred to an article which appeared on the front page of the "Decatur Daily" an newspaper published in the town of Decatur, on April 15, 1933 which contained an alleged statement of Attorney General Thomas E. Knight and the report of an alleged statement of Mr. Samuel S. Leibowitz, one of counsel for the defendants, and stated that said article

> "has contributed to the *already heated atmosphere which surrounded this case.* No Court regardful of its duty to see that trials must be fair and impartial could under such baneful influence permit the trial of this case to proceed at the present time. It, therefore, becomes the unquestioned duty of this court at the present time to enter of its own motion a continuance of this case until such a time when in its judgment a fair and impartial trial may be had. Therefore the case of the State of Alabama vs. Charles Weems is continued and the Court so orders." (Our emphasis.)

The full statement of Judge Horton appears in the record of State of Alabama against Charles Weems and an exact copy thereof is attached hereto, made part hereof, and marked Exhibit "A." As if to emphasize the necessity of the Court's action and to give dramatic confirmation to the Court's concern, even while the Court was announcing the continuance and while the defendant and counsel for the defense were in Court, an fiery cross was burned upon the tracks of the Southern Railroad at or near the railroad station in the town of Decatur flaming in the full light of day.

30. The aforesaid allegations contained in paragraphs 16 to 29 both inclusive, are more fully set forth and confirmed in the motion for a new trial heretofore made and filed in the case of the state of Alabama against Haywood Patterson, and the affidavits attached thereto, all of which are made a part of this motion as if fully set forth herein at length.

31. That the state of high feeling, passion, prejudice and hatred against the defendants and their counsel existing in Morgan County as set forth above, not only continue to exist and prevail in Morgan County, but more have reached new heights and greater intensity than ever before; and your defendants aver that it is absolutely unthinkable that they or any of them can procure a fair and impartial trial by any jury composed of citizens of Morgan County or that their lives and the lives of their counsel are not very seriously endangered.

32. In full confirmation of the statements made in the foregoing paragraphs, your petitioners submit herewith the affidavits of Victor Ellwood, sworn to the 8th day of August, 1933, marked Exhibit "B", sworn to the 29th day of August, 1933, marked Exhibit "C", sworn to the 2nd day of September, 1933, marked Exhibit "D" and sworn to the 28th day of October, 1933, marked Exhibit "E"; the affidavits of John Williams, sworn to the 2nd day of September, 1933, marked Exhibit "F", and the 14th day of November, 1933, marked Exhibit "G"; and the affidavits of Jim Jones, sworn to the 28th day of August, 1933, marked Exhibit "H", and sworn to the 27th day of October, 1933, marked Exhibit "I"; the affidavit of David Schriftman, a New York Attorney, sworn to the 14th day of November, 1933, marked Exhibit "J"; and the affidavit of George W. Chamlee, one of the attorneys for the defendants, sworn to the 7th day of November, 1933, marked Exhibit "K"; all of which affidavits are attached to the within motion and made part hereof as if fully set forth therein at length.

33. Your petitioners will not here again set forth at length the allegations and statements made in the affidavits referred to in the previous paragraph, and annexed to this motion, but will merely summarize their contents for the Court:

A) The above affiants were in Morgan County between June 15, 1933 and November 1, 1933.

B) During that time they visited many of the towns of Morgan County, including Decatur, Hartselle, Falkville, and Danville. They spoke with over a thousand white and over three hundred Negro inhabitants of said County, of whom about five hundred and twenty-five are specifically named in the affidavits concerning the "Scottsboro Case."

C) That a summary of the opinions expressed by the white persons spoken to is:

a) That the "niggers" and their "dirty Jew lawyers from New York" should be lynched or burned.

b) That too much time and money was already spent on the case, and "30¢ of rope" would put an end to it soon enough.

c) That the "niggers" were unquestionably guilty.

d) That even if they were not guilty they should burn anyway as a lesson to the rest of the "niggers" to keep them in their proper place, and "to stop raping our white women."

e) That the "niggers" and their "dirty Jew lawyers", and even General Chamlee, would never get out of Decatur alive, especially if those "niggers" were let go.

f) That no jury in Morgan County, or for that matter in the State of Alabama, would ever find or dare to find defendants not guilty.

g) That many would get on the jury merely to have a chance to "burn the niggers" and would be willing to state that they had no fixed opinion as to the guilt of the defendants in order to get on the jury.

h) That Ruby Bates and Lester Carter, two witnesses who testified for the defense at the last trial of Haywood Patterson ought to be burned or lynched.

i) That Judge Horton "sold out" to the "niggers".

j) That no "niggers" could ever get on the jury in Morgan County or anywhere in the State.

l) That several of the persons interviewed or mentioned were in the Patterson jury or venire.

m) That the "niggers" and their lawyers ought to get the same treatment that Royal got. (Royal was a young Negro who was lynched recently in the town of Decatur as will be set forth more fully hereinafter.)

D) That a summary of the opinions of the Negro persons spoken with is this:

a) That the case was a "frame-up" and that the Negro defendants did not have a chance.

b) That Patterson did not get a fair trial.

c) That none of the defendants could get a fair trial in Morgan County or any of the northern counties, but some thought they might have a chance in Birmingham.

d) That ever since the "Scottsboro case" came to Decatur, the negroes of that town and the surrounding country have been fearful of their lives, many have lost their jobs and all are terrified or terrorized.

e) That no Morgan County jury would ever release the defendants.

f) The white people of Morgan County would never let Negroes get on the jury.

g) That if the defendants and their attorneys came to Decatur there is little chance that they would get out alive.

34. That the matter and opinions set forth in the affidavits hereinabove referred to received eloquent confirmation in two editorials which appeared in the front pages of the "Community Builder" of November 3, 1933, and October 27, 1933, a newspaper published in the City of Huntsville, Madison County, Alabama (adjoining Morgan and Jackson counties), both of which editorials are attached hereto and marked Exhibits "L" and "M" respectively and made part hereof.

An excerpt from the said editorial of November 3, 1933 follows:

> "*And in the face of the feeling that exists at Decatur as well as throughout the Tennessee Valley,* against any lawyer claiming to represent the International Labor Defense League, we suggest that it would not be well for these lawyers to again show up on any soil at any point in this valley. We do not need that type of *cattle* down here, and their further appearance is wholly unnecessary." (Italics ours.)

An excerpt from the said editorial of October 27, 1933 follows:

"This newspaper feels that in fairness to the citizens of the Tennessee Valley as a whole, the negroes to be retried and especially lawyers hailing from the eastern states that these particular lawyers remain at home and not make their further appearance at Decatur, to defend negroes involved in the Scottsboro case or otherwise. Fact of the business is we do not believe one man by the name of Samuel S. Leibowitz has little enough sense to again make his appearance within the borders of the Tennessee Valley."

The sentiments and dark warnings expressed in these editorials confirm to the fullest extent the allegations of your petitioners that they cannot procure a fair trial, and that their lives and the lives of their attorneys are and will be seriously endangered in Morgan County, "as well as throughout the Tennessee Valley," by which your defendants verily believe is intended all the northern counties of the State of Alabama, as can readily be seen by reference to a map of the State of Alabama.

35. That on August 21, 1933, a young Negro, James Royal, was brutally lynched by a mob in the very City of Decatur, where the defendants are again about to face trial. Royal was not even charged with the commission of any crime, but the mob, disappointed in its efforts to seize and lynch another Negro, Thomas Brown, after vainly breaking into the Decatur jail, vent its anger on the innocent Royal, the first Negro who crossed their path.

36. That the newspapers published and circulated in Morgan County have contributed and added to the bad feeling and deep hatred existing against the defendants and their counsel, as was confirmed by Judge Horton's action, above referred to, in granting continuance of the trial of Charley Weems, basing same in great part upon an article appearing in a "Decatur Daily" of April 15, 1933.

37. That the newspapers published in Jackson County, more particularly the "Jackson County Sentinel", published articles hostile and damaging to the defendants, and on information and belief, said newspapers circulated and were widely read throughout Morgan County and spread the hostility against your defendants to Morgan County. (See articles appearing in "Jackson County Sentinel" of March 26, 1931; April 2, 1931 and April 3, 1931, in record in United States Supreme Court in *Powell* v. *Alabama*, pages 5 to 16, both inclusive, and referred to in motion for a change of venue heretofore made before Judge Hawkins in the Circuit Court of Jackson County on March 6, 1933, and hereinabove referred to.)

38. That the jail located in the City of Decatur where your defendants were confined during the previous trial in Morgan County where they will again be confined in the forthcoming trial, is an ancient and abandoned building, thoroughly unfit for the purpose of keeping your defendants safe from attacks by groups of persons who may seek to do so. In a recent press dispatch the said jail was described as one "which could be broken into with a teaspoon." That such is the case is proven by the fact that the defendants were at all times confined in the jail in Birmingham except during the actual trial in Decatur, when the jail was protected by a large contingent of National Guardsmen, and that immediately upon completion of the trial the defendants were sent back to the Birmingham jail for safety.

39. Your petitioners allege that, in addition to Jackson and Morgan Counties, they cannot and will not procure a fair and impartial trial and trials, and their lives and the lives of their attorneys and of witnesses on behalf of the defense will not be safe at a trial in any of the northern counties of the State of Alabama, to wit, Lauderdale, Limestone, Madison, Colbert, Franklin, Lawrence, Marshall, DeKalb, Marion. Winston, Cullman, Blount Etowah, Cherokee, Lamar, Fayette, Walker, St.

Clair, Calhoun, Cleburne, Pickens, Tuscaloos, Shelby, Talladega, Clay and Randolph Counties.

40. Your petitioners submit that the Court has already ruled that a fair and impartial trial of the defendants cannot be had in at least any of the following counties: Madison, Limestone, Marshall, Dekalb, Cherokee and Etowah counties. Your petitioners conclude this from the fact that Judge A. E. Hawkins heretofore transferred the venue of their trials from Jackson County to Morgan County as the nearest county to Jackson County where the defendants may procure a fair and impartial trial, as hereinabove set forth. That the said six counties are nearer to Jackson County or not any further from Jackson County, than is Morgan County. That the cogent reasons that caused Judge Hawkins to eliminate the aforesaid six counties not only exist and continue to exist up to the present time, but, more, are enhanced and made more compelling by the situation as it has developed since that time, is hereinbefore and hereinafter set forth.

41. Upon information and belief, particularly strong prejudice against Negroes exists in all of the northern counties hereinbefore enumerated in paragraph 39.

42. Upon information and belief, that the newspapers published in Jackson County, and more specifically the "Jackson County Sentinel" which has published articles hostile and damaging to the defendants as is hereinbefore more fully set forth in paragraph 37, circulates throughout the county and widely read by residents of all the northern counties hereinabove enumerated in Paragraph 39 and more especially, Limestone, Madison, Morgan, Cullman, Marshall, Blount, Etowah, Cherokee, St. Clair, Calhoun and Cleburn counties.

43. Upon information and belief, that the newspapers published in Madison County, and more specifically, the "Huntsville News" which has published articles hostile

and damaging to the defendants as is hereinbefore more fully set forth; and the "Community Builder" whose articles are hereinabove referred to in Paragraph 34, circulate throughout and are widely read by residents of all the northern counties of the State of Alabama enumerated in Paragraph 39.

44. Upon information and belief, that the newspapers published in Morgan County, and more specifically the "Decatur Daily" which has published articles hostile and damaging to the defendants particularly the article appearing in its issue of April 15, 1933 which Judge Horton considered so serious as to be the ground for his granting a continuance in the case of Charley Weems, as hereinbefore set forth in Paragraph 29; circulate throughout and are widely read by residents of all the northern counties of Alabama enumerated above in Paragraph 39.

45. Upon information and belief, that a pamphlet entitled "The Unpublished Inside Story of the Infamous Scottsboro Case" by one J. Glenn Jordan, full of misrepresentations, falsehoods, incitations and incendiary statements against the defendants and all those connected with the defense, as is more fully set forth hereinabove in Paragraph 24, was and still is being widely circulated and profitably sold and their contents more widely circulated by word of mouth, throughout the northern counties of the State of Alabama enumerated in Paragraph 39. That said pamphlet was calculated to and did and does arouse and heighten the animosity of the residents of the aforesaid northern counties and tended and tends to convince them in advance of the trials of the guilt of the defendants, and for that reason, it will be difficult, if not impossible, for the defendants to procure a fair trial in any of said northern counties.

46. Upon information and belief, that the aforesaid articles and others of similar vein appearing in afore-

said newspapers and aforesaid pamphlet set forth in Paragraphs 42, 43, 44 and 45 were calculated to and did and do arouse hostility and prejudice against your petitioners in the northern counties of the State of Alabama above enumerated in Paragraph 39.

47. Upon information and belief that citizens from all of the northern counties of Alabama enumerated above in Paragraph 39 and especially from the counties adjoining Jackson and Morgan counties, attended the various trials and hearings of your petitioners at Scottsboro, Jackson County, and Decatur, Morgan County. These persons were infected with the epidemic virus of hostility and animosity against the defendants and the widely expressed belief in the guilt of the petitioners that prevailed at the trials and in the said two counties, and brought the same back with them to their home county and spread the same there still further by word of mouth and otherwise. That many of the aforesaid persons would be prospective jurors if the trials were transferred to any of their respective counties.

48. Upon information and belief, there are no jails in any of most of the aforesaid northern counties enumerated in Paragraph 39 where your defendants can be safely confined during their trials. That even the jail in the City of Decatur which is one of the larger county seats in the northern counties, was not regarded as safe by the authorities and your petitioners were confined in the Birmingham Jail at all times except at the previous trial of Haywood Patterson when the jail was guarded by a contingent of the National Guard.

49. That the respective county seats of the northern counties are located in rural communities with a small population and having small police forces, and where the attendance of the military at their trials would be absolutely essential to safeguard the lives of your petitioners, their attorneys and witnesses for the defense.

50. That the populations of the respective county seats of the aforesaid northern counties above enumerated in Paragraph 39, and of Jackson and Morgan Counties, according to the United States Census of 1930 are as follows:

County and County Seat	*Population of County Seat*
Lauderdale—Florence	11,729
Limestone—Athens	4,238
Madison—Huntsville	11,554
Jackson—Scottsboro	2,304
Colbert—Tuscumbia	4,533
Franklin—Russellville	3,146
Lawrence—Moulton	639
Morgan—Decatur	15,593
Marshall—Guntersville	2,826
DeKalb—Fort Payne	3,375
Marion—Hamilton	695
Winston—Double Springs	306
Cullman—Cullman	2,786
Blount—Oneonta	1,387
Etowah—Gadsden	24,042
Cherokee—Center	288
Lamar—Vernon	519
Fayette—Fayette	2,109
Walker—Jasper	5,313
St. Clair—Pell City	835
Calhoun—Anniston	22,345
Cleburn—Heflin	1,231
Pickens—Carrolton	569
Tuscaloosa—Tuscaloosa	20,659
Shelby—Montevallo	1,245
Talladega—Talladega	7,596
Clay—Ashland	1,476
Randolph—Wedowee	396

51. Upon information and belief that several of the National Guard under the command of Major Starnes, who attended the former trials at Scottsboro came from

Guntersville in Marshall County (Record in the United States Supreme Court in Powell, et al., v. Alabama, p. 12).

52. Upon information and belief, that the aforesaid carried back with them to Marshal County the prejudiced atmosphere that surrounded the former trial of your petitioners in Jackson County.

53. Upon information and belief that several of the National Guard under the command of Major Starnes, who attended the former trials at Scottsboro came from Gadsden in Etowah County (Record in the United States Supreme Court in *Powell, et al.*, v. *Alabama*, p. 12).

54. Upon information and belief, that the aforesaid carried back with them to Etowah County the prejudiced atmosphere that surrounded the trials of your defendants in Jackson County.

55. That after the arrest of your petitioners in March, of 1931, they were taken to the jail in Gadsden in Etowah County and were confined there until and during their trials in Scottsboro. That during their said trials your petitioners were several times transported to and from said jail and the Court. That such view of your petitioners under military guard increased the prejudice against them; as was stated by Chief Judge Anderson of the Supreme Court of Alabama in his dissenting opinion in *Powell* v. *Alabama*, 224 Ala. 540; 141 So. 201, 214:

> "Every step that was taken from the arrest and arraignment to the sentence, was accompanied by the military. Soldiers removed the defendants to Gadsden for safe-keeping, soldiers escorted them back to Scottsboro for arraignment, soldiers escorted them back to Gadsden for safekeeping while awaiting trial, soldiers returned them to Scottsboro for trial, a few days thereafter, and soldiers guarded

the court house and grounds during every step in the trial, and after trial and sentence, again removed them to Gadsden. Whether this was essention to protect the prisoners from violence, or because the officials were over apprehensive as to the condition of the public mind matters little, as this fact along was enough to have a coercive influence on the jury."

56. Upon information and belief, that after the conviction of your petitioners in Jackson County, the Sheriff of Etowah County requested the removal of your petitioners from the Gadsden jail on the ground that same was unsafe.

57. That Victoria Price, the prosecutrix and alleged victim of the alleged attack by your petitioners, resides in Madison County in the City of Huntsville (Record in the United States Supreme Court in *Powell* v. *Alabama*, at p. 22).

58. Upon information and belief that because of the residence of the said Victoria Price in Madison County, your petitioners cannot have a fair and impartial trial in said County or be safe from attack by the aroused populace of said county.

59. That Ruby Bates, formerly a co-complainant with Victoria Price, but at the last trial of Haywood Patterson a witness on behalf of the defense, resides or did formerly reside in Madison County in the City of Huntsville (Record in the United States Supreme Court in *Powell* v. *Alabama*, at p. 26).

60. Upon information and belief, because of the residence or former residence of said Ruby Bates in said Madison County, and also because said Ruby Bates had contradicted and discredited the story of Victoria Price, there is extreme bitterness prevalent in said County against her, and your petitioners could not have a fair

and impartial trial in said county or they and witnesses on their behalf be same from attacks by the aroused populace of said county.

61. That during the trial of Haywood Patterson in Decatur, groups of organized mobs from Madison County attempted to march upon Decatur to attack the defendants and their counsel and fiery crosses were burned, as is more particularly set forth in Paragraphs 19, 20, 21 and 22.

62. Upon information and belief, that the following counties of the northern counties enumerated in Paragraph 39 and their respective county seats are as far removed or further removed from Decatur, Morgan County than is the City of Birmingham, Jefferson County: DeKalb, Marion, Lamar, Pickens, Tuscaloosa, Shelby, St. Clair, Talladega, Clay, Randolph, Cleburne, Calhoune and Cherokee counties.

63. Upon information and belief that the following counties of the northern counties enumerated in Paragraph 39 and their respective county seats are as far removed or further removed from Scottsboro, Jackson County, than is Birmingham, Jefferson County: Pickens, Tuscaloosa, Lamar, Fayette, Walker, Marjon, Winston, Franklin, Colbert, Lauderdale, Shelby, Talladega, Clay, Cleburne and Randolph counties.

64. Upon information and belief, that the county seats of the following northern counties enumerated above in Paragraph 39 can be reached by train from Morgan and Jackson Counties, Alabama and Chattanooga, Tennessee, only via Birmingham: Tuscaloosa, Pickens, Lamar, Fayette, Winston, Walker and Shelby counties.

65. Upon information and belief, that the following county seats of the respective northern counties enumerated above in Paragraph 39 have no railroad connecting with them:

County	*County Seat*
Lamar	Vernon
Marion	Hamilton
Randolph	Wedowee
Cherokee	Center
Lawrence	Moulton
Winston	Double Springs

66. Upon information and belief, the attorneys for the petitioners and witnesses on behalf of the defense cannot be adequately or safely quartered at any of the foregoing northern counties enumerated in paragraph 39.

67. That on or about August 14, 1933, two young Negroes, Dan Pippin, Jr. and A T Harden, were lynched and a third, Elmore Clark, left for dead, by a mob of citizens in Tuscaloosa county who intercepted the Sheriff and his deputies who were taking the said negroes to the Birmingham jail for safety.

68. That several weeks later and on or about September 24, 1933 another negro, Denis Cross, a paralytic, was lynched by a mob at Tuscaloosa, Tuscaloosa County.

69. Upon information and belief that Jefferson County is the nearest county to Morgan and Jackson Counties where your petitioners may procure a fair and impartial trial, and where their lives and the lives of their counsel and witnesses on behalf of the defense may be safeguarded, for the reasons above set forth and affirmatively for the following reasons:

a) The county seat of Jefferson County is the City of Birmingham, with a population of 259,678, according to the United States Census of 1930.

b) That said City of Birmingham is the largest city in the State of Alabama and one of the largest in the South.

c) Upon information and belief, that the deep-seated prejudice and hatred against persons of the Negro race that prevails in the northern counties of the State of Alabama does not exist to the same extent among the large metropolitan and urban population of the City of Birmingham.

d) Upon information and belief, that the prejudice, hysteria and stirring of passions that accompanied the entire "Scottsboro Case" is felt less in Birmingham than in any of the northern counties of Alabama.

e) Upon information and belief that the newspapers published and circulated in the City of Birmingham, and Jefferson County published and publish more moderate and less inciting and prejudiced accounts and editorials of the cases of your petitioners than the newspapers of any of the northern counties of Alabama.

f) Upon information and belief, that the City of Birmingham has a large metropolitan police force which may protect and provide adequate defense to your petitioners, their counsel and witnesses for the defense and may make unnecessary the calling of the National Guard to attend the trials of your petitioners.

g) That the jail in the City of Birmingham, where your petitioners are now confined and have been confined for many months, adjoins the court where your petitioners would be tried, and your petitioners can be transported to and from the jail and the court by interior passages, thus insuring the safety of your petitioners.

h) That the attorneys for your petitioners and witnesses on behalf of the defense can be more adequately quartered and protected in the City of Birmingham than in any of the northern counties of the State of Alabama.

i) That the removal of the trials to Birmingham will facilitate consultations between your petitioners and their attorneys.

j) That the City of Birmingham is the nearest city of the northern counties not otherwise objectionable for the reasons hereinabove set forth, which is most convenient to all the parties concerned with the cases of your petitioners and can be most easily reached by regular and frequent train service from all parts of the State and beyond the State.

Your petitioners are aware that objection may be made to the court's granting of the within motion for a change of venue on the alleged ground that Section 3381 of the Alabama Code allegedly provides that only one change of venue may be had. However, your petitioners aver that Section 3381 does not preclude the court from granting a change of venue in the present circumstances; and further, that if it be held that Section 3381 precludes the granting of a change of venue, that said Section would be in violation of the Constitution of the State of Alabama and of the Constitution of the United States and the Amendments thereto in its application to the cases of your petitioners.

71. Your petitioners attach to this petition and make part hereof as if fully set forth herein at length the affidavit of Claude Patterson, sworn to the 3rd day of November, 1933, marked Exhibit "N"; also a pamphlet entitled "A Reply to Southern Slanderer" which has been and still is, widely circulated and read in Morgan County and the surrounding Counties, and marked Exhibit "O".

72. Your petitioners respectfully request the Court that they be afforded the opportunity to prove by oral and other testimony of witnesses such allegations of the within motion as may be controverted or denied by the State of Alabama.

WHEREFORE your petitioners pray that an order be made to transferring the above styled causes of your defendants for trial to the Circuit Court of Jefferson County, and for such other and further relief in the premises as the Court may deem just and proper, for

all of which no previous application has been made except as hereinabove set forth.

Dated: November 15, 1933.

G. W. CHAMLEE
S. S. LEIBOWITZ,
J. R. BRODSKY,
ELIAS SCHWARZBART,
Attorneys for Defendants.

HAYWOOD PATTERSON,
OZIE POWELL,
WILLIE ROBERSON,
OLIN MONTGOMERY,
CLARENCE NORRIS,
CHARLEY WEEMS,
ANDY WRIGHT,
by G. W. CHAMLEE, Attorney,
Defendants and Petitioners.

State of Alabama,
County of Jefferson, } ss.:

Haywood Patterson, Ozie Powell, Will Roberson, Olen Montgomery, Clarency Norris, Charley Weems and Andy Wright, make oath in due form of law, that they are the defendants and petitioners herein and that the facts as stated in the foregoing petition are true to the best of their knowledge and belief.

HAYWOOD PATTERSON,
OLIN MONTGOMERY,
WILLIE ROBERSON,
CLARENCE NORRIS,
OZIE POWELL,
ANDY WRIGHT,
CHARLIE WEEMS.

Subscribed and sworn to before me
this 19th day of November, 1933.

F. L. ERWIN,
Notary Public.
(Seal)

Exhibit "A".

COPY OF STATEMENT OF Honorable James E. Horton on April 17, 1933, in granting a continuance in the case of State of Alabama vs. Charley Weems.

HAROLD HARLIN
Official Court Reporter
Athens, Alabama.

Gentlemen, there has been set for trial this morning the case of the State vs. Charlie Weems. This is the second of what are known as the "Scottsboro cases." Something over a week ago the case of the State vs. Haywood Patterson was tried by a jury of this county. The nature of these cases, being a case where a negro is accused of the rape of a white woman, is such as would naturally excite resentment, and it is always difficult, even under the most favorable circumstances to obtain a fair and impartial verdict. The law has always recognized in cases of rape whether committed by one on a person of their own race, or by an attack on another race, that the accusation itself is apt to excite an undue sympathy for the accuser, and it enjoins upon the Court to see to it that this undue influence is removed so far as the Court may be able to do. There is a great deal of misinformation in the minds of the public generally in regard to rape cases in the South. I have been on the bench for over twelve years; more than ten of these years, among my duties has been the trial of criminal cases. The district which I now serve is composed of four counties lying on both sides of the Tennessee River, and the counties contain a mixed population. Formerly Madison County was also in this district, and it is one of the larger and more populous counties of the state, and it also contained a great number of negroes. During this period I have had only three cases where a negro was accused of an attack upon a white woman. Two of the indictments were for rape, and one was for an assault with intent to rape. This assault

with intent to rape occurred within Limestone County, the county of my residence. This was a case where a young northern girl, unsophisticated, and who was making a long trip for the first time, went aboard an L&N train at Cincinnati to come South. There was a negro porter on that train. As the train entered Limestone County the porter having helped her from an upper berth in which she had been sleeping, and she being the only woman in the car, followed her into the dressing room and tried to take liberties with her. Her screams caused him to desist and brought help. He got off of the train and escaped to Chicago. The Pullman Company helped the State of Alabama to have him extradited. He was tried and convicted. The other cases were tried in this the county of Morgan. In one of these cases a woman accused a negro of committing rape upon her and the trial was had before a jury. During the taking of the evidence many facts casting doubts upon the guilt of the accused were introduced, and after the case went to the jury, a former Solicitor, Dave Almon, a man with a big heart, who now sleeps in your city Cemetery, came to me, and told me some things he had heard convinced him of the innocence of the accused, and he was much disturbed lest the jury convict. The jury stood eight for acquittal, and four for conviction. Afterwards upon the motion of the same Solicitor, the case was dismissed. There was another case in this court. I will not go into details, but the evidence was of such a nature that the innocence of the accused appeared certain and the unwholesome case was thrown out of court. I live in the county of Limestone, across the river from this city, and that county has between thirty and thirty-five thousand population about one third of whom are negroes. That county was established when the state was admitted to the Union in 1818, and has contained a mixed population these one hundred and fifteen years. During that entire period, except for the one instance I have cited to you that occurred on the L&N train, the parties to which were residents of far distant states, there has not been a

single instance, so far as my information goes, and so far as I have been able to find out from diligent inquiry, of either a rape or an attempted rape by a negro upon a white woman. I am not denying that such things have not occurred in the South, but I am stating now the facts which I do know. I think this simple recitation of the facts are sufficient to disprove the egregiously erroneous ideas which exist in regard to the relations of the races in the South and that convictions follows accusation.

On account of certain influences, many of which to this court appear sinister, and are actuated by a desire to stir up and foment strife between the races in the South it has been difficult to try what are known as the Scottsboro cases upon the real facts. I am not now passing judgment upon the verdict in the case already tried. I know the Court had great difficulty in preventing extraneous influences having some effect on the jury. With these influences still existing, with the public mind still disturbed, with thousands of true and deeply patriotic citizens desiring that justice be done, and that the South appear in its true light, there has come to my attention a statement published, which to my mind makes it impossible at the present time to fulfill the high purpose of a Court of Justice. There is a paper published in this city—it is a daily paper, and has a wide circulation. I have no purpose to criticize this paper because it prints the news as its duty requires it. On the front page of this paper appears the following statement, which I will read:

(Statement)

I do not know whether the leading counsel for the defendant made the statement imputed to him. I am not stating that he did, but so far as it might influence this trial it could make little difference whether he actually made it or not. The effect will be the same. The published statement was uncalled for. It was addressed to a panel of highly intelligent jurors, and men who wished to do what was right in the case. But the state-

ment itself must of necessity make impossible any just and impartial verdict to be arrived at at this time. The accused negro must be the victim of this statement. His leading attorney would be a millstone about his neck. The impartiality of our courts must suffer as a necessary result. This statement attributed to the Attorney General of the State whether made or not, and blazoned in the first column of the front page has contributed to the already heated atmosphere which surrounds this case. No Court regardful of its duty to see that trials must be fair and impartial could under such baneful influences permit the trial of this case to proceed at the present time. It, therefore, becomes the unquestioned duty of this court at the present time to enter of its own motion a continuance of this case until such a time when in its judgment a fair and impartial trial may be had. Therefore, the case of the State of Alabama vs. Charlie Weems is continued and the court so orders.

Exhibit "B".

CIRCUIT COURT,

STATE OF ALABAMA,

Morgan County.

No. _____

THE STATE OF ALABAMA

vs.

HAYWOOD PATTERSON, et al.,

Defendants.

State of Alabama, }
Jefferson County, } ss.:

Victor Elwood, beign duly sworn deposes and says that he was in Decatur, Alabama, from June 15th

through June 24th, and between June 27th and through July 6th. That during that period he had conversations with numerous residents of Morgan County in their homes, on the streets and other public places with reference to the Scottsboro Case. Many of these conversations your deponent was unable to record because of the fact that he could not secure the name of the individual with whom he carried on the said conversation. The following conversations are literal duplications or as near literal as could be transcribed from memory a short time after the conversation. The date of conversation is indicated next to the name.

1. JUNE 19: Mr. and Mrs. Lumas, 4th Avenue off Molton St. said that those "niggers" should burn—if the state doesn't burn them then the people should take them out and lynch them, to teach the rest of the "niggers" a lesson. Also that the people shouldn't have let that damn Jew Lawyer come down here and if he comes again the people have made up their minds to take him and all the rest of the New York Jews and the "niggers" and lynch them. Mr. Lumas is a bookkeeper for the Cotton Seed Press in Decatur.

2. JUNE 19: Mr. Smith, proprietor of a Lunch Room on Molton St. 1 block off Second Ave., known as Heavy's Lunch Room, said that there shouldn't be any trial for them damn "niggers"—30¢ worth of rope would do the work and it wouldn't cost the County much. Also that he was ready to help lynch them. If the state don't kill them then the people here will—if they only bring them back. Those God darn New York Jews will be killed too if they try to come down here and clear those black bastards.

3. JUNE 19: Had conversations with a group of farmers on 2nd Ave., in Albany and they said that if them New York Jews came down with those black son of a Bitches, that they would lynch them together.

4. JUNE 21: Mr. Winton, 5th Ave., Decatur, said that the people won't stand for another trial of the Scottsboro "niggers" here. That the people will mob the "niggers" and the lawyers too.

5. June 21: Proprietor of American Cafe. He said that if those Jews come down here again the people will lynch them and the "niggers" too. He said that the sentiment of the people is very bad towards the "niggers" and if they are tried again in Decatur that there will be a neck-tie party.

6. JUNE 21: Mrs. Lawrence Frahn, proprietor of Frahn's Garage on 2nd Ave., Albany, Ala. He said that he was very bitter against the "niggers" and that he is ready to go with a mob to lynch them any time and also those damn Jew Bastards who are defending the "niggers." He said that the "niggers" needed no trial, only a rope around their necks. He also said that there are no 12 men in Morgan County who will listen to the defense side of the trial. He said if he was on the jury he would burn them "niggers" if he could and he believes that every man in Morgan feels the same.

8. JUNE 21: Proprietor of St. Joseph Cafe, Main St. one block off Bank St. He said that those "niggers" will get what's coming to them if they bring them back down here for trial and them damn Jew Lawyers ought to be hung with a rope along with the black bastards. That they will be taken for a ride if they ever come here again.

9. JUNE 21: John D. Wyker, proprietor of Hardware Store on Bank St. said that the Negroes got a fair trial and there isn't any use spending a lots of money in retrying them. That they should have strung them up when they caught them in Scottsboro, Ala.

10. JUNE 22: Jim West said that if the "niggers" are brought back for the trial that he will be ready to help mob them anytime. That the people will start the lynch-

ing and he will be right with them to lynch the "niggers" and the lawyers with them.

11. JUNE 22: Mr. Cattrel said that he believes the Judge is bought off and the people will lynch the "niggers" if they are ever brought back for another trial. The sentiment here is for a lynching both the lawyers and the "niggers".

12. JUNE 23: I had conversations with a group of farmers and their sentiment was very strong against the "niggers" and they said that Judge Horton has sold out to the L. L. D. and that if the "damn niggers" is brought back here for trial they will take them out and lynch them together with the lawyers. The farmers said that they can't get a jury from Morgan County that will give a different verdict than the last one. All the business men and the farmers want to see the "niggers" electrocuted—and it is impossible to get any other verdict except the death verdict in Morgan County.

13. JUNE 24: E M Lee, 423 Grant St. said that those negroes should have been hung before they reached Scottsboro, Alabama, and says that all the New York lawyers want is to make trouble between the two races of people.

14. M. A. Leoplard, 1109 7th St. said that he thought that the people should have done something before now about those "niggers" and that they better not turn them loose in Alabama.

15. JUNE 24: J V Joiner, Molton St. didn't have anything to say on the Scottsboro Case at all.

16. JUNE 24: A L Jolley, 304 W. Molton St. said that them damn Jews are just down here to try to make us let "niggers" sit on our white jury but they will play hell doing it, for they may go out for a ride if they come down here again.

17. June 24: A C Joiner, Somerville Road, said that if they bring them "niggers" back here for a trial that it will be the same as before because no jury of white men in Morgan County will give a different verdict than they got before.

18. JUNE 27: Mrs. Nelson, 703 6th Ave. West said that he believes the "niggers" got a fair trial except what Wade Wright said. Wright shouldn't have made such statements. And that Leibowitz, the New York lawyers, should be hung for saying what he did about the Southern jurors.

19. JUNE 27: C H Miller, 1722 9th Ave. South said that the Judge should have never brought the trial of those "niggers" to Decatur because it will give us a black name in the future.

20. JUNE 27: Mrs J W Murphy said that the Negroes should stay in their place and not try to go with the white people and that is what these Northern lawyers were trying to do—to make the negroes as good as the Southern white people. But they will never be able to do that here nor anywhere else in the south.

21. JUNE 27: E K McMurray, said that if they bring that "nigger" trial here again, they will get the same treatment as before and maybe the New York lawyers will get it worse.

22. JUNE 27: Mrs. & Mr. Mierdhart, Route #3, said these negroes might not be guilty but if the State of Alabama lets them go free, why it will make all the rest of the negroes worse and it will be dangerous for a white girl to go out alone.

23. JUNE 27: Mrs. Murphy, 221 Line St., said that they shouldn't spend so much money in trying to save them "niggers" when there are lots of poor white people that need money to live on—30¢ worth of rope would have saved all this trouble and would have been finished.

24. JUNE 27: Miss Elizabeth Morris, 101 Prospect Drive, said she didn't care what they do with the negroes for she doesn't follow the case very closely—but she said that it is making all the rest of the negroes meaner and harder to manage.

25. June 27: J. B. Leeman, 807 Molton St. said that if the trial is brought back here again that they would get the same verdict and if he was on the Jury he would be sure that the same verdict was rendered.

26. JUNE 27: W M Mosely, 603 Line St. said that those negroes should be killed so that there would be no trouble between the Blacks and the Whites. He said that he believes that they got a fair trial in Scottsboro, Ala.

27. JUNE 27: Frank Price, 208 W. 9th St. said that the Scottsboro negroes and those Jew lawyers are putting meanness in the minds of the rest of the negroes here in the south. So we got to get rid of them before it causes some serious trouble.

28. JUNE 27: W G Roberts, Agent for L&N RR Co. said that he would be very glad when they burned those negroes so that it would stop all that noise from the North and so the negroes will be kept in their place without any trouble.

29. JUNE 27: E S Morris, Freight Agent, said that the negroes should be punished but he does not know whether they should be burned or not because both girls were whores anyway, so it doesn't mean much. The only thing it will cause the whites to kill some of the negroes on account of this case.

30. JUNE 28: Mrs. L J Sneed, 1206 4th Ave. S. Didn't have much to say about the case but she wished they would never have brought the trial to Decatur.

31. JUNE 28: G H Wiggins, 603 4th Ave. W. said that we have to stick to our old Southern traditions and we will not let anyone from New York tell us how to run the South. We gave the negroes a fair, good trial and then we were called morons and fools by that Leibowitz and he better not show up here again.

32. N E. Wiggins, 337 Grant St. said that if the New York Jews think they can come down here and tell our courts what to do, they are damn fools. We don't stand for social equality with negroes and we won't have it in our courts. JUNE 28th.

33. JUNE 28: E T Thompson, 714 4th Ave. W. said that sentiment is strong here against those damn Jews and the Negroes also and no jury from this county will ever turn them loose.

34. JUNE 28: Mrs. Minnie Lyons, 520 Lafayette St. said there won't be safety nowhere in the South if them "niggers" are turned loose for it will make all the rest of them meaner and a white girl will be afraid to go out alone, she will be afraid that "niggers" will rape her.

35. JUNE 28: Mrs. Callahan, 401 Church St. said them "niggers" got what they needed and maybe it will stop so many cases.

36. JUNE 28: Mr. Oscar Pearson, 615 Vine St. said that he would like to see all of them "niggers" burn and all of their lawyers with them.

37. JUNE 29: P J Fowler, 1316 5th Ave. South, said that one dollars worth of rope would settle the Scottsboro Case for all of the time and that all the people of this town ought to use something like that on the Jews to teach them a lesson.

38. JUNE 29: J W Frahn, 432 E. Molton St. said he hoped they would bring the negroes here so that they might get the same verdict as before.

39: JUNE 29: A L Frazer, 1222 9th Ave W. said that everyone knows the negroes are guilty, so why not keep up the Southern custom and get rid of them. The first thing we know these smart Jew lawyers will get them turned loose.

40. JUNE 29: R B Graves, 1202 Second Ave. W. said that we ought to deal with the negroes like our grandfathers did and we would be rid of the whole thing.

41. JUNE 29: Mr. Garrett, 1207 4th Ave W. said that he had to give the I. L. D. credit for the fight it is putting up for the negroes, but it won't do any good because it is nothing but a Negro organization.

42. JUNE 29: John Hardy, 646 Grant St. S. said that we will keep our good old Southern laws and deal with the Negroes the same as before.

43. JUNE 29: John Sherman, Witson St. said that if he could get help he would help lynch the "niggers" if they came to trial here.

44. JUNE 29: Jim West of the St. Joseph Cafe said he would lead the mob just to see those "niggers" killed and he believes they will be lynched if they come back here.

45. JUNE 29: Charles Sherman, Wilson Ave. said that those "niggers" should be lynched on general principles if for nothing else.

46. JUNE 29: J D Dean, 401 Grove St. said that he isn't as sore at those "niggers" as he is at those Jews that come down from New York to defend those black bastards.

47. JUNE 29: R L Smith, 405 Grove St. said he wants to help lynch those damn Jew son of a bitches.

48. JUNE 29: Mrs. W M Bailey, 515 LaFayette St. said that if, those "niggers" are turned loose, it will be dangerous for a white girl to go out alone.

49. JULY 1: Mrs Mattie Tati, Route #2 said that the negroes ought to be lynched, because if they are turned loose it will make all the negroes want to rape white women and girls.

50. JULY 1st: B F Tial, 412 5th Ave. W. said that the negroes shouldn't have been brought here in the first place, but since they are here they should have been heard and burned to get rid of the whole thing.

51. JULY 1: Mrs H W Rice, 205 6th Ave. W. said the Scottsboro Negroes were out to rape all the girls they could and that we must keep the negroes in their place to make it safe for white girls.

52. JULY 1: J H Riddle, Route #2, said that if there is a white man in Morgan County who would turn the negroes loose, he ought to be lynched himself.

53. JULY 1: Mrs Fred Robinson, Route #2 said that the negroes are getting too mean and that the Scottsboro negroes should be hung to teach all of them a lesson.

54. JULY 1: W M Vaughn, 904 Giddis St., said that the Negroes got a fair trial and that if they came here again they would get the same verdict as before.

55. JULY 1st: W M Johnson, 919 Giddis St., said that the negroes should have been hung before the lawyers knew anything about it.

56. JULY 1: Frank Painter, 909 Giddis St., said there isn't a man in Morgan County that would turn those "niggers" loose.

57. JULY 3: A M Cottrell, 213 3rd Ave S. said that if the negroes are brought here again for trial they won't get out so healthy the people won't stand for it any longer.

58. JULY 3: Mr. Clopton, 205 3rd Ave. S. said there was a mob at the first trial of these negroes and that there would be one at the next one to do what they intended to do at the first.

59. JULY 3: John Reynolds, 509 Ferry St., said that they better not bring them "niggers" to trial here again, if they would there would be a rope for the lawyers as well as the negroes.

60. JULY 3: John D Jess, 316 Grant St wouldn't talk about the case at all.

61. JULY 3: H E Jeffery, 444 Grant St. said he doesn't know much about the case but he believes the negroes got what was coming to them and that if the white people would let them they would think they are as good as the white people and that would be hell.

62. JULY 3: Carl Flowers, 530 Grant St. said that a good strong rope would save all of the court expenses.

63. JULY 3: J M Jones, 603 Vine St. said they would never get a jury to listen to those Jews from New York, because they are not as good as the "niggers".

64. JULY 3: Will Horton, 22 10th Ave. W. said that Ruby Bates sold out and so did Judge Horton but that they would never get a jury here in Morgan County to turn those negroes loose.

65. JULY 3: J E Norney, 8th Ave. W. said that he wished he could sit on the next jury, they would get the same verdict as before.

66. July 3rd: S F Hasey, 213 4th Ave W. said that it isn't customary for a negro to sit on a jury in the South and that it is too late to change it and that people from the north can't force them to change it.

67: JULY 6: R L Hopkins, 707 6th Ave. W. said that there never was social equality here and there never would be and that Jew Lawyers can't make a Southern white court allow a negro to sit on the jury.

68. JULY 6: Mr. McCray, 733 Vine St. said if the Scottsboro case is tried here again the people ought to lynch the New York Jew lawyer. The southerners can run the south as they had been and those Jew lawyers and northern negroes ought to stay out.

69. JULY 6: C W Flowers, 523 E. Vine St., said he wished they never had brought that damn "nigger" case here, it is just making a black name for Decatur. It ought to have been kept in Jackson County.

70: JULY 6: J G Hamilton, 305 3rd Ave. S. wouldn't talk about the case, just said he believed the negroes were guilty.

71. JULY 6: J V Hamilton, 1219 7th Ave. W. said he hoped the trial would be held here again because he wanted them to get the same verdict as before.

72. JULY 6: J. C. Brant, 133 6th Ave., said we can run this southern county by whites and that there will never be negro jury service here.

73. JULY 6: Mr. Brown, 713 9th Ave. W. said that the white people in the south wouldn't stand for negroes on the jury, it is not the southern custom.

74. JULY 6: Mrs. W R Campbell, 114 4th Ave. W. said if they have the trial here again, that old Jew lawyer and all the negroes should be lynched.

75. JULY 7: T B Rogers, 442 Grant St. said that we had to keep something over the head of the negro to have him under control. If the Scottsboro boys are set free, it would cause a race riot.

76: JULY 7th. J M Ryan, Route #2 Decatur, Ala., said that he would like to serve on the next jury. He would give them the same verdict as every other man in Morgan County would. There isn't a man in Morgan County that would let them loose, he said.

77. JULY 7: G H Smith, 615 E Vine St. said that the Jew lawyer better stay away, that there would be trouble at the next trial.

78. JULY 7th: Roy Smith, 321 E Molton St. said that a good rope and a crowd of men is what the "niggers" and the New York lawyers need and they may get it if they come here again.

The deponent also attended the motion for a new trial at Athens, Alabama, and while there mingled with local residents. After the hearing your deponent spoke to several of the people there and the universal expression which the deponent heard from all sides was, "Judge Horton ought to be lynched for giving the 'niggers' a new trial. He sold out to the New York Jews like Ruby Bates."

After the motion for a new trial the depeonent returned to Decatur, Alabama, where he spoke to people gathered on street corners, all of whom were residents of Decatur or of the same country side around Decatur and within Morgan County. The same expression was frequently heard to the effect, "Judge Horton ought to be lynched for giving the 'nigger' a new trial. He sold out to the New York Jews like Ruby Bates."

During these conversations another common expression heard was the following: "If they bring those 'niggers' back for a trial they're gonna be lynched"; also expressions such as "No jury in Morgan County will turn those 'niggers' loose." The deponent verily believes, that the sentiment of Morgan County and surrounding counties is so hostile against the Scottsboro

Defendants that it will be impossible to secure a jury in said Morgan County which can weigh the evidence fairly and impartially.

VICTOR ELWOOD.

Subscribed and sworn to before me this
8th day of August, 1933.

P. D. Davis,
Notary Public.
(Seal)

Exhibit "C".

CIRCUIT COURT OF THE STATE OF ALABAMA,

Morgan County.

State of Alabama

vs.

Haywood Patterson, et al.,

Defendants.

State of Alabama, }
Jefferson County, } ss.:

VICTOR ELLWOOD, being duly sworn, deposes and says: That on the 22nd and 23rd days of August, 1933, your deponent visited the town of Hartselle, in Morgan County, State of Alabama and spoke with the persons whose names are enumerated below. That your deponent sets forth hereunder, opposite the name of each person so enumerated, the substance and effect of what each of the respective persons said with reference to

the above named case, and related matters thereto. That in some instances, and wherever possible, your deponent states the literal substance of such conversations.

1. W. T. Stewart, a dealer in farming tools, said: "Something ought to be done with them Scottsboro niggers for it's ruining the other niggers here in the south." He also said that they (the Scottsboro defendants) should be hung to teach the rest of the Negroes that that is what they can expect if they don't stay in their places.

2. D. W. McNeill, dry-goods shop-keeper, on Main Street and Highway, said that there would never be a jury in Morgan County that would give a verdict other than the one that was given in Decatur. He said that he believes they got a fair trial the first time.

3. Edd Templeton and his brother, proprietors of grocery store on Main Street, said that they would be willing to help lynch the "damn niggers" if they came back in Morgan County. "So it would put fear in the rest of the niggers and stop all this other business all over the country."

4. Dick Burleson said that they ought to take the nine negroes out and lynch them and "have it all over with for it's just causing more trouble among the niggers." He further said that they will never get a jury in Morgan County that will not convict them, if they have a hundred trials.

5. Otto Sharp, of East Main Street, said: "Them Scottsboro niggers should be taken out and killed." That he would help do it if he got a chance. That they will never get a jury that will turn them loose nor would be himself ever sit on a jury that had any Negroes on it.

6. S. E. Gibson, proprietor of clothing store on Main Street, said that if he was called for jury duty on the trial of these Negroes, he would do what any other man

in Morgan County would do, that is, "send the niggers to the hot-seat."

7. Leldon Rabin, said that if they bring the nine Negroes up in Morgan County again, "a mob will take them out and lynch them and that is what ought to be done with them and the New York Jew lawyers also."

9. C. C. Doss said that he believed the negroes got a fair trial and that "someone would be hurt if they tried them in this county any more."

10. Ollie Gibb, proprietor of a cafe on Main Street, said that they would never get a jury from this county that wouldn't convict the "black devils."

11. Drew Jones, rooming-house proprietor, said that "I would like for the niggers to get a fair trial but I don't believe that they can get a fair trial now in Morgan County."

12. J. W. Roberts, proprietor of dry-goods store on Main Street said: "It's impossible to get a jury from Morgan County that will listen to Ruby Bates or them New York lawyers, don't matter what they say."

13. L H Holloway, proprietor of furniture store on Main Street said that if he were ever called on the jury to try the Negroes he would "give them the chair just like they got before."

14. J. D. Alvis said that if he was called for jury duty he would send the nine boys to the chair and "If I could, I would like to see them New York lawyers sent to the same place."

16. Richard Williams, taxi-driver, said that if he was called on the jury to try the Scottsboro Negroes, he would send them to the chair, and he didn't believe that there was a jury in Morgan County that would do otherwise.

17. A clerk, name unascertained, at the hardware store on Broad Street, said that it was impossible for the Scottsboro Negroes to get any fairer trial than they got before in Decatur, and that if he were called for jury duty he knew exactly what he would do.

Your deponent spoke with about 100 other persons, residents of Hartselle, relative to the trial of Haywood Patterson and the other Scottsboro defendants, and in almost every instance they were of the very decided opinion that the Scottsboro defendants had up to then received as fair a trial as they could ever expect and many of the residents threatened that if the case came up again in Morgan County, they would see to it that the Negroes would either be sent to the electric chair, or, if a jury failed them, they would take the law into their own hands, lynch the boys and finish the case once for all. It was general sentiment that too much money had been spent on the case already, when it could have been ended by "a few inches of good strong thirty-cent rope."

In the very rare instances where residents said they would like to see the negroes get a fair trial, it was admitted that a fair hearing would never be held in Morgan County, because of the lynch spirit aroused in the inhabitants and because of the bitterness towards the publicity which the Scottsboro cases had occasioned in the public throughout the world.

Expressions of hate and malice against the attorneys for the defense and against the witnesses for the defense, particularly Ruby Bates and Lester Carter, were unnumerable, and voiced the sentiment of the inhabitants of the entire vicinity.

Your deponent became aware, in the time that he was in Hartselle, of such an intensity of hatred against all Negroes who were brought to trial on charges wherein white persons were alleged to have been raped or mole-

sted, that it is your deponent's firm opinion that a fair trial in the above case in Morgan County would be inconceivable, and out of the realms of all possibility, without even considering the danger of a lynching. The recent lynching of a Negro by the name of Royal on August 25, 1933, in Decatur, and the twice-threatened attempted lynching of Thomas Brown, a negro charged with the alleged rape of a white woman has thrown the entire county into an uproar, and the cry for blood against negroes charged with any manner of alleged crimes involving white persons has over-reached all bounds, and renders impossible a fair trial of Haywood Patterson at the hands of a Morgan County jury.

Many newspapers and periodicals all over the country and almost every newspaper in the South itself has been carrying editorials almost daily in the past week "mourning over the disgrace" to Morgan County that has come as a result of the mob spirit in the very recent Royal and Thomas Brown cases. From these indications, your deponent must come to the conclusion, as must everyone aware of the situation, that Haywood Patterson and the other defendants in the case, cannot receive a fair trial in Morgan County.

VICTOR ELWOOD.

Sworn to before me this
29th day of August, 1933.

THELMA BOLDEN,
Notary Public.
(Seal)

Exhibit "D".

CIRCUIT COURT OF THE STATE OF ALABAMA,

MORGAN COUNTY.

STATE OF ALABAMA

against

HAYWOOD PATTERSON, et al.,

Defendants.

State of Alabama, }
Jefferson County, } ss.:

VICTOR ELWOOD, being duly sworn, deposes and says: That he was in the town of Hartselle in Morgan County, State of Alabama, on the 29th and 30th days of August, 1933, and that he was in the town of Falkville, Morgan County, on the 31st day of August, 1933 and had many conversations with the residents of both Hartselle and Falkville about the Scottsboro cases and matters related thereto. Deponent, whenever possible, secured the names of those who ventured any opinion in the said matters, and lists them below together with the substance and effect of what each of the said persons said. In some instances deponent states the literal substance of fragments of such conversations. They are as follows:

1. Ed. Elliott, of Hartselle, said: "I believe that the people should let the law alone for them niggers will never get out of Alabama alive anyway. There isn't a jury in Morgan County that will turn them loose." He further said "Them damn Jew lawyers is the cause of all this trouble of the niggers in the South."

2. Mr. Signer, of Hartselle, said that all the Negroes should be taken out by a "crowd" and done with "the same as they done down in Tuscaloosa and it would stop so much the raping of white girls."

3. Mr. Gibson, of Hartselle, said they ought to "get next" to the National Guardsmen and "get them niggers like the officers did in Tuscaloosa."

4. The proprietor and the clerk of "Peoples Drug Store" in Hartselle, said that they felt that the people ought to let the law take its course with the nine negroes. They also said that the Northern lawyers should be kept out of the case.

5. Spoke with over fifty young men, all residents of Hartselle, whose names I could not secure, and they were all of the opinion that the nine "Scottsboro" negroes should be sent to the electric chair and "burn." It was also said that if they were released, and a "mob" formed to get them these young men of Hartselle would "like to be told of it so as to see them niggers hung to a tree."

7. The restaurant owner on Main Street, Hartselle, said that they ought to "burn Ruby Bates and them niggers all together." He also said "Tom Knight should have hit that damn Jew lawyer in the mouth for calling them niggers 'mister'."

9. Spoke to a number of farmers, all residents of Hartselle. It was the general opinion that if the nine negroes were acquitted they would never live to get out of Morgan County alive.

10. The proprietor of "Strand Barber Shop" in Hartselle said that there isn't a man in Morgan County who has not heard and talked about the "Scottsboro" cases and that every one of them had his mind all made up about the cases. A worker in the shop was of the same opinion.

11. Elbert Nicks and his wife, residents of Hartselle, said that the Negroes "ought to be hanged" and that they couldn't get a man out of Morgan County for jury duty in the "Scottsboro" cases that didn't have a fixed opinion in his mind as to his verdict.

12. A number of men in the "Strand Barber Shop" in Hartselle said that "The Jew lawyers should be run out of town if they come down here to defend them damn niggers." It was generally thought that the negroes had had a trial as fair as they could possibly get, and that there wasn't a man that didn't want to see the negroes either convicted or hung.

13. A clerk in "Brothers Meat Market" in Hartselle, said that "the people wouldn't stand for them New York lawyers to come down here again and do as they did before. They were trying to tear down our custom of the South and make the niggers have social rights with the white people."

14. A man who seemed to be the proprietor of "City Cafe" in Hartselle said that "they will never get a jury that has never talked about the case of them niggers in Morgan County, and it is impossible by Law to give them a fair trial in Morgan County with men on the jury who have fixed opinion."

16. A clerk in the J. L. Grovers store near the Hartselle Post Office said that his mind was already fixed if he were called as a juror in the next trial of the Scottsboro Negroes and that he thought it was the same with every man in the County.

17. Mr. Bridges, who runs a Barber Shop on West Main Street, in Hartselle, said that if he were called as a juror in the next trial he would do just as the Jury did in Decatur at the last trial of Haywood Patterson. He also said "They (the defendants) think the Jew lawyers and New York Money will save them. Well, they're

wrong for every man in Morgan County that is able to serve on the jury will convict them regardless of what the defense says."

18. A clerk in Hill's Grocery Store in Hartselle, said that the negroes didn't have a chance in Morgan County to be freed. He said they were sure to be convicted.

19. A man who seemed to be the proprietor of the J. H. Carshine Store in Hartselle, said that "there has been too much of this trial played up in the newspapers around here to give the negroes a fair trial."

20. The lumber inspector for the L & R Railroad Co. said he knew nothing about the "Scottsboro case" and he wouldn't be bothered whichever way it was decided, but he "didn't have no use for a nigger at all." They were alright to do some work, but then he was through with them.

G. N. Wallace, proprietor of a filling station on Route #3, Hartselle, said that they couldn't get a jury in Morgan County that could render a fair verdict. He said it was all because of the "Northern lawyers and the New York Jew money."

22. Spoke with a number of residents of Falkville on the streets of Falkville and it was the opinion of every one of them that "the court couldn't get a jury from Morgan County that would listen to anything in the way of evidence for the defense." They all said that the negroes should be electrocuted or lynched.

23. Mr. Couch of Falkville, said that he was a good shot with a pistol and that he would like to kill all of the "Scottsboro" negroes. He said that if he got a chance he would kill them and that every white man should do the same.

24. Spoke with a crowd of farmers in Falkville and they were all of the opinion that any jury picked in Morgan

County would have its mind made up long before the trial. They cursed the New York lawyers and all the counsel and witnesses for the defense.

25. The station agent at Falkville said he didn't think it was possible to pick a jury in Morgan County that would give the defendants a fair trial.

26. Mr. Drinkard, proprietor of garage in Falkville, said that if they didn't hurry and do something about these negroes that it would "break Jackson County." He said there wasn't a true jury in Morgan County that could be picked for that case. He said that every man in the County knew of the case and wanted to sit on the jury.

27. Dock Francis, and his son, both of Falkville, said that there wasn't a man in the county who was really eligible for jury duty. Mr. Francis said that there wasn't a man in the county who would not lie as to his personal opinion in order to serve on the jury.

28. Spoke with a number of working men and farmers at the corner garage in Falkville, and they all said that there weren't twelve men in Morgan County who didn't have their mind made up about the Scottsboro case. They said that nobody would listen to the "damn Jew lawyers or to the niggers or to Ruby Bates and Lester Carter."

Your deponent spoke with hundreds of people, other than those already mentioned, in Hartselle and in Falkville, and it was almost unanimous opinion that the "Scottsboro" negroes should be "burned or hung to a tree". The few that did think that defendants were entitled to a fair trial were certain that there weren't twelve men in Morgan County who would weigh the evidence and render a just and fair verdict.

Many threatened that when the case would come up, a "mob" would be formed, the defendants taken away, and hung, to "save all the trouble of a trial."

There was much talk of shooting, lynching, hanging and burning if the negroes came up for trial in Decatur again. The lawyers for the defense, the witnesses and the defendants themselves were threatened with all manner of death if the cases were heard in Morgan County where they could be reached.

From all of the above, deponent believes that defendants could not possibly get a trial in Morgan County free from extreme prejudice and hate and that it would actually be dangerous for defense counsel, for the witnesses and for the defendants to appear in Decatur.

VICTOR ELWOOD.

Sworn to before me this
2nd day of September, 1933.

THELMA BALDWIN,
Notary Public.
(Seal)

Exhibit "E".

IN THE CIRCUIT COURT OF MORGAN COUNTY,
ALABAMA.

No. _____

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON, et al.,

Defendants.

State of Tennessee,
County of Hamilton, } ss.:

Victor Elwood, being duly sworn, deposes and says: That on October 22nd, 23rd, 24th, 25th, 26th and 27th,

1933, your deponent was in Morgan County, State of Alabama.

That deponent had occasion to speak with many of the residents of Morgan County concerning the Scottsboro cases. Deponent states hereunder the substance of these conversations together with the names and addresses of those residents of Morgan county with whom he spoke in those instances where deponent could secure the same.

W. N. Courtner, Route 2, Decatur, Alabama. He said that the "Scottsboro niggers were guilty of the charge and them New York Lawyers are trying to free them, but they will never be freed in a Morgan County Court."

Pat Handly, Route 2, Decatur, Alabama. He said that he didn't believe that the National Guards assigned to the case cared much if "them niggers was taken by a mob."

S[illegible]ynn, Route 2, Decatur, Alabama. He was of the opinion that most of the men who are qualified to sit on a jury in Morgan County will all have their minds "fixed" already as to what would be their verdict in the Scottsboro case.

Mr. Farrir, Route 2, Decatur, Alabama. He said that he believed that the Scottsboro negroes ought to be electrocuted and "it would learn the rest of the niggers to let white women alone from then on."

R. A. Auther, Route 2, Decatur, Alabama. He said that if he were called for jury duty on the Scottsboro cases that he would do as "any other southern white man; he would burn them if possible."

Raymond Moor, Route 2, Decatur, Alabama. He said that "all of them niggers and their Jew lawyers should be killed and the country wouldn't miss anything and it would learn the other niggers to stay in their places."

Mr. Griffith, Route 2, Decatur, Alabama. He said that "if all of the niggers was dead why the south would be better off and them Scottsboro niggers has caused lots of trouble with the rest of the niggers."

Proprietor of Log Cabin, Route 2, Decatur, Alabama. He and many others standing around were of the opinion that "them niggers didn't need no trial, only a good rope and one end over a tree" as one of them expressed himself.

Mr. Knight, Route 2, Decatur, Alabama. He said "those damn black niggers thought they could rape white girls and get away with it, but they will get the chair, for no man in Morgan County will let them loose."

J. D. Morton, Route 2, Decatur, Alabama. It was his very vehement opinion that they ought to send Ruby Bates and Lester Carter and that New York Jew Lawyer all to the electric chair.

Proprietor "Little Jim Barbecue Stand," Hartselle, Alabama. He said that all the Scottsboro negroes were guilty and that any Morgan County jury would see to it that they got what was coming to them.

Mr. Smith, Route 2, Decatur, Alabama. He said, among other things, and if he were on that jury that would try the Scottsboro negroes, that he already knew what "his say would be", and that he would burn them.

E. L. Hayes, Route 2, Decatur, Alabama. He said that he didn't know very much about the case, but that he didn't think a true jury could be selected in Morgan County to sit on that Scottsboro Case.

C. W. Bowens, Route 2, Decatur, Alabama. He said that it was his opinion that a jury could not be found in all of Alabama to sit on a case like the Scottsboro case without having their minds already made up.

J. T. Wood, Route 2, Decatur, Alabama; he sa' that he had never known of a case that had taken so ...g to try and that he believed it pretty nearly impossible to get a jury that has never heard or read about the Scottsboro case.

J. E. Lee, Route 2, Alabama. He said that it wouldn't be safe for white women any more "if they turned the niggers a loose."

Joe Burt, Route 2, Decatur, Alabama. He said that "if they ever turn those niggers loose why it will make the rest of the niggers do worse than ever before."

J. H. Stone, Route 2, Decatur, Alabama. He said that there weren't twelve men in Morgan County that would let the Scottsboro negroes go free.

Mr. Parks, Route 2, Decatur, Alabama., He said that if he was on that jury that he would do all he could to convict the Scottsboro negroes again and send them to the electric chair.

L. A. Lott, Route 3, Hartselle, Alabama. He said that the Scottsboro negroes had got a fair trial before and that now "they ought to go ahead and kill them."

T. S. Storin, Route 3, Hartselle, Alabama. He said that it was certain that if the defendants came back to Morgan County they would get the same as got before.

Mrs. Harris, Route 3, Hartselle, Alabama. She said that they ought to hang the negroes and teach the rest of them not to bother with white women.

Mr. Weaver, Route 3, Hartselle, Alabama. He said that if the Scottsboro negroes were turned loose no white women would be safe anymore anywhere alone.

Mr. C. R. Penn, Route 3, Hartselle, Alabama; he was of the opinion that not only should the negroes be killed, but the lawyers also.

Mr. Cornell, Route 3, Hartselle, Alabama. He said that they should have let the crowd at Scottsboro take the negroes and that all of this trouble with a new trial would have been over with.

Mr. N P Murphy, Route 3, Hartselle, Alabama. He said that if he was selected as one of the jurors in the next trial of the Scottsboro defendants that he would give them the chair.

Mr. Woods, Route 3, Hartselle, Alabama. He said that the "damn niggers were raping too many white women and that it all started from the time of this Scottsboro nigger trial."

J. C. Black, Falkville, Alabama. It was his opinion that all of the Scottsboro negroes "should be done away with."

J. McCaig, Falkville, Alabama; he said that if "they let them Jews come down here and get the Scottsboro niggers free no white women would be safe here any more."

Mr. Gibson, Falkville, Alabama. It was his opinion that a few yards of rope would do for the negroes and would help stop all the attacks on white women by negroes.

Mr. Patrick, Falkville, Alabama. He said that the negroes should be hanged, "by their necks, and that it would end this trial and teach the rest of the niggers a lesson."

C. H. Parker, Falkville, Alabama. He said that he believed that the negroes had a fair trial the first time and that if they tried them again they will get just the same verdict as before.

Mr. Harvell, Hartselle, Ala., Route 2. He said that "the jew lawyers from New York were the cause of the

niggers not getting what they deserved, the chair, and these lawyers ought to be killed for saying that a nigger is as good as a white man."

R. B. Templeton, Hartselle, Alabama. He said that there wasn't a chance of getting a Morgan County Man who would sit on the jury and free the Scottsboro negroes.

C. H. Sandlin, Hartselle, Alabama. He said that he didn't keep up with the Scottsboro case but that anyway it was his opinion that they ought "to go on and kill the niggers and get rid of them."

Mr. Hunt, Route 1, Hartselle, Alabama. He said "if the people here will let them niggers' lawyers come down here and try to break down our laws, why the niggers will be raping every white woman who goes out by herself. They ought to keep all the rest of them by making short work of these nine niggers."

T. C. Clark, Route 1, Hartselle, Alabama. He said he didn't care what they did with the negroes but that he thought that they couldn't get a man in Morgan County who could serve on jury duty in the Scottsboro cases if the truth were told about their opinions.

Mr. Summers, Route 1, Hartselle, Alabama. He said that the guards should have let a mob take the negroes out and that would have ended the whole Scottsboro case.

Mr. W. T. Tucker, Route 1, Hartselle, Alabama. He said that "if the New York jew come here again they ought to be taken and lynched along with the negroes."

Mr. Best, Route 2, Decatur, Alabama. Said it was useless to spend money on the negroes when a good strong rope would be cheaper and quicker.

Mr. A. S. Blackwell, Route 2, Decatur, Alabama. It was his opinion that the negroes are guilty and if they were freed it would cause lots of trouble.

Mr. Hamilton, Route 2, Decatur, Alabama. He said that if he were called for jury duty in the next Scottsboro trial that his mind was already made up as to what he would do.

B. H. McClellan, Route 2, Decatur, Alabama. It was his opinion that if one of the girls, the complainants in the Scottsboro cases, had been one of his people that there would not have been a chance for the law to take its course or to fool around with the case the way it has been.

Summerville, Morgan County, Alabama. Talked with a crowd of farmers and it was the opinion of every one of them, and they so expressed themselves, that it would be easy to get a mob to go after the Scottsboro negroes and that they, themselves would help to do it if anybody would only start it.

Green Gable Barbecue Stand, Route 3, Decatur, Ala. He said that he had talked with lots of men about the Scottsboro cases and that all of those he had talked with had fixed opinions of the case already. He further said that if he were to sit as a juror on that case, he would send them to the chair.

E. L. Perryman, Danville, Alabama. He said that he believed "the Scottsboro niggers should be sent to the hot seat" and he said that he hoped that Attorney General Knight would send them there.

Deponent further states that it was impossible to secure the names of the many hundreds of residents in Morgan County with whom he spoke about the Scottsboro cases. Invariably, however, almost each and every man he spoke with had a definite opinion that the Scotts-

boro defendants should be "electrocuted", "hung to a tree", "burnt", "sent to the hot seat", and in very many cases, "lynched." Those who thought themselves eligible to sit on a jury in Morgan County hoped that they would be allowed to act as such in these cases so that they would have the opportunity of convicting them and sending the defendants to death in the electric chair.

That most every one of those residents of Morgan County whose names are listed above, and many more whose names deponent could not secure seem to be men of more or less substantial means; with homes of their own in many instances, and such men as would very likely be called to sit on a jury panel in Morgan County. Time and again these men would make the statement that twelve men could not be picked from the whole of Morgan County who had not heard or read of the Scottsboro cases and who are not quite thoroughly familiar with the issues involved in these cases and as a result thereof who had not very definite and decided opinion as to the guilt of the defendants in the Scottsboro cases.

It is deponent's own opinion from what he has heard and seen in and about Decatur, Hartselle, Danville, Summerville and all of the outlying districts in Morgan County generally, that the defendants in the above case could not possibly secure a true hearing and a fair trial in Morgan County.

VICTOR ELWOOD.

Subscribed and sworn to before me
on this the 28th day of October, 1933.

J. B. WHITE,
Notary Public,
(Seal) Hamilton County,
Tennessee.

Exhibit "F".

CIRCUIT COURT OF THE STATE OF ALABAMA,

MORGAN COUNTY.

STATE OF ALABAMA

against

HAYWOOD PATTERSON, et al.,

Defendants.

State of Alabama, }
Jefferson County, } ss.:

JOHN WILLIAMS, being duly sworn, deposes and says:

That he was in Decatur, Morgan County, State of Alabama, on the 24th, 25th and 26th day of August, 1933, and spoke with many of the inhabitants of Decatur about the "Scottsboro" cases and related matters. Whenever possible, deponent secure the names and addresses of those with whom he spoke, and enumerates them hereunder, together with the substance of each respective persons expression of opinion regarding the "Scottsboro" cases and other matters relating to treatment of negroes accused of rape. They are as follows:

1. R. D. Hinkle, Stevensville, Rt. 1, a mine worker, said that he would like to see the negroes tried in court, but that he was afraid that the negroes might be lynched.

2. Lamar Moye, 610 W. Molton Street, student at the University of Alabama, said the Negroes should be tried in court and acquitted, since in his opinion they were innocent of the crime charged. He also said that the

people in the neighborhood were of a mind to lynch the negroes rather than have them go through the procedure of a court trial.

3. Frank Rost, 1508 10th Ave. S., said: "Those damn Jew lawyers ought to be lynched. The negroes could be handled before they came down here."

4. A. E. Rogers, 120 7th Ave., West said: "It would be a good thing to hang a number of the niggers to break up all the raping around here."

5. T. K. Harrison, 630 Sherman Street, watchman, said: "All the niggers should be run out of the country. We have no use for the sons-of-bitches here. This is a white man's country."

6. L. O. Turney, Fortville, Route 1, farmer, said the negroes should be tried in court.

7. George Shaneyfelt, Route 1, farmer, said: "All the niggers should be hung or run out of the country."

Deponent spoke with many of those named and it was the opinion of every one of them that "niggers like these (Scottsboro defendants) should be taken out and swung from a limb." That it was a waste of money trying the Scottsboro negroes in court. They said: "It should be handled like it's always been handled—take them out and finish the job." That "we will get that nigger Brown when he'll be brought up for a preliminary hearing here in Decatur." (Thomas Brown and Royal, two young negroe boys, were sought after on the alleged charge of rape against a white woman. Royal was shot and killed by unnamed persons before he was arrested or actually charged with any crime. According to all the press, two attempts were made by a "mob" to lynch Thomas Brown. The Royal boy was shot in Decatur.)

Your deponent heard many of the last above named say in substance and effect: "If that Jew lawyer Liebowitz ever puts his foot in this place again, there will be a lynching." Speaking of the Tuscaloosa lynchings (three negro defendants in Tuscaloosa Alabama were taken away by a "mob" from the sheriff's deputies who were delivering them to the Birmingham jail for their safety. Two of the Negroes were shot and killed by the "mob" and one was later found severely wounded.) they said: "That's the way the Scottsboro niggers should have been handled." They also said: "Ruby Bates ought to be swung up herself, just like those niggers. She was bought over with Jew money."

Almost every resident of Decatur that your deponent spoke with was of the opinion that it was much more practical to lynch negroes accused of almost any crime, rather than to go through all the trouble of bringing them to trial.

Deponent is certain that if any of the people who spoke to him were chosen as jurors for the trial in the above named case in Morgan County, such persons would carry with them to the jury box a "lynch" psychology. Your deponent was impressed by the fact that of all the persons he met while he was in Decatur there were less than a handful who thought that Negro defendants generally, and much less the Scottsboro defendants, should be brought to trial in the regular course of law and order.

Many persons, a number of whom are named above, by their own statements implicated themselves in the recent attempt to lynch a negro charged with rape. They spoke freely of their attempts to "string the nigger up" and seemed to be proud of such exploits. This clearly indicates the spirit of the inhabitants of Decatur.

Deponent is certain that if the "Scottsboro" defendants are tried in Morgan County, they will not get a fair

trial, free from the "lynch" prejudice so openly expressed to him during his visit to Decatur.

JOHN WILLIAMS.

Sworn to before me this
2nd day of September, 1933.

THELMA BOLDEN,
Notary Public.
(Seal)

Exhibit "G".

CIRCUIT COURT,

MORGAN COUNTY,

State of Alabama.

No. _____

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON, et al.,

Defendants.

State of Alabama, }
Jefferson County, } ss.:

JOHN WILLIAMS, being duly sworn, deposes and says: That he was in Decatur, Morgan County, in the State of Alabama, on the 28, 29, 30 and 31 of October, and on the 1 of November, 1933.

That he spoke with hundreds of residents of Decatur concerning the Scottsboro cases above-entitled, and secured expressions of opinion on the said cases and on matters related thereto.

Deponent lists hereunder such names of the residents of Decatur as could be secured, and divides the names into two categories. In the first category, deponent lists those names of residents who most vehemently were of the opinion that the Scottsboro defendants should be, as was expressed by many, "hung by their necks", "strung from a tree", "killed", "taken out and done away with", and "get their necks broke." That these residents of Decatur were of one mind, in that no quarter be shown to the Scottsboro defendants when they came up for trial in Decatur, and that the witnesses and lawyers were of one cloth with the defendants and should be treated in the same way. The instances above cited of remarks made by residents are but typical of what was actually said to your deponent with regards to all concerned in the Scottsboro cases. It was further said that "those Scottsboro niggers ought to be swung up with the Jews together"; "if those niggers aren't hanged, they better never let their feet hit ground in the State of Alabama"; "that Jew lawyer Leibowitz had better stay away from Decatur or it'll only be a one-way trip for him"; "Ruby Bates ought to be swung up right with the niggers, coming down here with those expensive clothes." It was the voiced opinion of many from the group of residents above mentioned that it would not be difficult for a mob to get at the defendants since the National Guard, stationed at the Court House or wherever the defendants and the lawyers happened to be, would not be too anxious to protect those concerned if the mob showed a bit of insistence.

Deponent spoke to many residents of Decatur, whose names he could not secure. Hereunder deponent lists the names and addresses of those residents in Decatur who fall into the first category above mentioned, and with whom he spoke:

1. C. E. Pupley, 207 Johnston St., Decatur.
2. A. E. Landers, 701 Second Avenue west, Decatur.
3. Walter D. Paster, 703 Second Avenue west, Decatur
4. V. R. Lee, 705 Second Avenue west, Decatur
5. C. W. Lenzy, 713 Second Avenue west, Decatur
6. K. J. E. Case, 721 Second Avenue west, Decatur
7. E. S. Landers, 722 Third Avenue West, Decatur
8. M. J. Mariom, 720 Third Avenue west, Decatur
9. Dan Kulkan, 712 Third Avenue west, Decatur
10. J. M. Belew, 708 Third Avenue west, Decatur
11. J. E. Burleson, 704 Third Avenue west, Decatur
12. I. C. Doss, 620 Third Avenue west, Decatur
13. B. M. Simpson, 618 Third Avenue west, Decatur
14. Henry Bowers, 616 Third Avenue west, Decatur
15. Earl Capus, 610 Third Avenue west, Decatur
16. A. G. Roper, 514 Third Avenue west, Decatur
17. S. P. Gann, 512 Third Avenue west, Decatur
18. J. W. Stover, 507 Third Avenue west, Decatur
19. P. G. Masterson, 511 Third Avenue west, Decatur
20. J. A. Thornhill, 607 Third Avenue west, Decatur
21. N. Miller, 609 Third Avenue west, Decatur
22. T. O. Praser, 615 Third Avenue west, Decatur
23. J. R. Grey, 617 Third Avenue west, Decatur
24. E. C. Gargers, 619 Third Avenue west, Decatur
25. M. Lovelady, 705 Third Avenue west, Decatur
26. Tom Roston, 707 Third Avenue west, Decatur
27. C. McMillan, 709 Third Avenue west, Decatur
28. G. V. Redding, 711 Third Avenue west, Decatur
29. A. F. Harris, 713 Third Avenue west, Decatur
30. T. E. Begger, 721 Third Avenue west, Decatur
31. F. O. Pitt, 708 Third Avenue west
32. C. Enteners, 622 Fourth Avenue west, Decatur
33. E. Weaver, 618 Fourth Avenue west, Decatur
34. W. K. Campbell, 616 Fourth Avenue west, Decatur
35. G. O. Sewell, 508 Fourth Avenue west, Decatur
36. S. D. Allen, 322 Fourth Avenue west, Decatur
37. J. M. Stokely, 316 Fourth Avenue west, Decatur
38. Doc Herse, 304 Fourth Avenue west, Decatur
39. W. A. Watkins, 608 Fourth Avenue west, Decatur
40. C. H. Campbell, 144 Fourth Avenue west, Decatur

41. A. M. Cartell, 218 Fourth Avenue west, Decatur
42. A. Atkins, 413 Fourth Avenue west, Decatur
43. W. W. Kincaid, 505 Fourth Avenue west, Decatur
44. J. H. Baker, 519 Fourth Avenue west, Decatur
45. E. K. Goode, 301 Fourth Avenue west, Decatur
46. F. C. Free, 303 Fourth Avenue west, Decatur
47. W. A. Hopper, 706 Fifth Avenue west, Decatur
48. E. L. Cunningham, 612 Fifth Avenue west, Decatur
49. S. H. Doublin, 602 Fifth Avenue west, Decatur
50. A. W. Billion, 518 Fifth Avenue west, Decatur
51. H. C. Slate, 406 Fifth Avenue west, Decatur
52. W. B. Greenhall, 412 Fifth Avenue west, Decatur
53. J. R. Wilson, 402 Fifth Avenue west, Decatur
54. W. M. Marshall, 322 Fifth Avenue west, Decatur
55. M. Simpson, 316 Fifth Avenue west, Decatur
56. T. T. Roberts, 304 Fifth Avenue west, Decatur
57. Ben Hill, 224 Fifth Avenue west, Decatur
58. L. W. Lee, 222 Fifth Avenue west, Decatur
59. F. D. Burleson, 232 Fifth Avenue west, Decatur
60. M. E. Brown, 209 Fourth Avenue west, Decatur
61. G. W. Walker, 221 Fourth Avenue west, Decatur
62. J. A. Henderson, 614 Fourth Avenue west, Decatur
63. S. B. Cross, 308 Fourth Avenue west, Decatur
64. F. Collier, 410 Fifth Avenue west, Decatur
65. H. S. Porter, 414 Fifth Avenue west, Decatur
66. S. D. Brock, 318 Fifth Avenue west, Decatur
67. H. E. Hicks, 316 Fifth Avenue west, Decatur
68. M. J. Mann, 302 Fifth Avenue west, Decatur
69. O. H. Clemons, 224 Fourth Avenue west, Decatur
70. W. N. Green, 408 Fourth Avenue west, Decatur
71. G. E. Pearson, 302 Fourth Avenue west, Decatur
72. J. C. Holesapple, 312 Fifth Avenue west, Decatur
73. C. F. Watterson, 306 Fifth Avenue west, Decatur
74. R. W. Mullins, 510 Fourth Avenue west, Decatur
75. S. F. Hoxy, 213 Fourth Avenue west, Decatur
76. C. J. Henderson, 612 Fourth Avenue west, Decatur
77. H. E. Sanders, 201 Fourth Avenue west, Decatur
78. O. H. Clemons, 224 Fourth Avenue west, Decatur
79. H. S. Porter, 414 Fifth Avenue west, Decatur

80. E. E. Thompson, 202 Fourth Avenue west, Decatur
81. M. Dobb, 216 Fourth Avenue west, Decatur
82. W. L. Carol, 320 Fourth Avenue west, Decatur
83. M. Spruce, 318 Fourth Avenue west, Decatur
84. M. F. Martins, 404 Fourth Avenue west, Decatur.
85. J. Hardy, 206 Fifth Avenue west, Decatur
86. A. B. Pettey, 204 Fifth Avenue west, Decatur
87. D. Ayers, 202 Fifth Avenue west, Decatur
88. W. H. Turner, 321 Fourth Avenue west, Decatur

Stricken from last jury panel at Haywood Patterson trial.

89. F. Wear, 317 Fourth Avenue west, Decatur
90. E. Waight, 323 Fourth Avenue west, Decatur
91. C. W. Clardy, 607 Fourth Avenue west, Decatur
92. O. Napps, 609 Fourth Avenue west, Decatur
93. J. R. Gibson, 623 Fourth Avenue west, Decatur
94. D. D. Goode, 703 Fourth Avenue west, Decatur
95. A. M. Vinson, 716 Fifth Avenue west, Decatur
96. J. E. Stipe, 714 Fifth Avenue west, Decatur
97. J. C. Cleveland, 710 Fifth Avenue west, Decatur
98. G. G. Hamilton, 305 Fourth Avenue west, Decatur
99. J. A. Meadows, 315 Fourth Avenue west, Decatur
100. C. B. Ferguson, 413 Fourth Avenue west, Decatur
101. W. M. Minor, 401 Fourth Avenue west, Decatur
102. W. T. Willoughby, 611 Fourth Avenue west, Decatur
103. F. R. Ling, 613 Fourth Avenue west, Decatur
104. J. H. Pettey, 619 Fourth Avenue west, Decatur
105. A. R. Simpson, 718 Fifth Avenue west, Decatur
106. J. W. Cowen, 712 Fifth Avenue west, Decatur
107. L. P. Couch, 614 Fifth Avenue west, Decatur
108. A. Ryanhart, 520 Fifth Avenue west, Decatur
109. W. E. Ange, 522 Fifth Avenue west, Decatur
110. S. D. Brocks, 318 Fifth Avenue west, Decatur
111. R. J. Ray, 310 Fifth Avenue west, Decatur
112. W. W. Elnor, 216 Fifth Avenue west, Decatur
113. J. Hines, 208 Fifth Avenue west, Decatur
114. B. M. Brown, 136 Fifth Avenue west, Decatur
115. C. E. Lowery, 626 Fourth Avenue west, Decatur.

116. A. F. Latham, 713 Fourth Avenue west, Decatur
117. G. L. Thrasher, 720 Fourth Avenue west, Decatur
118. A. D. Dobbins, 620 Fifth Avenue west, Decatur
119. E. Hallan, 618 Fifth Avenue west, Decatur
120. M. E. McCluskey, 309 Fourth Avenue west, Decatur
121. C. F. Holesapple, 311 Fourth Avenue west, Decatur
122. E. Cregg, 313 Fourth Avenue west, Decatur
123. P. W. Simmons, 503 Fourth Avenue west, Decatur
124. E. M. Odun, 402 Fourth Avenue west, Decatur
125. E. H. Phillips, 601 Fourth Avenue west, Decatur
126. L. Paul, 714 Sixth Avenue west, Decatur
127. J. E. Landers, 704 Sixth Avenue west, Decatur
128. W. E. Hyde, 622 Sixth Avenue west, Decatur
129. G. M. Flautt, 611 Fifth Avenue west, Decatur
130. J. Phillips, 1207 Fourth Avenue south, Decatur
131. L. B. Davis, 1207 Fourth Avenue south, Decatur
132. I. M. Eubanks, 1112 Fourth Avenue, south, Decatur
133. B. A. Campbell, 1116 Fourth Avenue south, Decatur
134. H. G. Nelson, 1210 Fourth Avenue south, Decatur
135. G. L. Snoble, 1312 Fourth Avenue south, Decatur
136. C. P. Oday, 3120 Fourth Avenue south, Decatur
137. W. S. Saint, 1322 Third Avenue south, Decatur
138. L. D. Hollenworth, 2106 Third Avenue south, Decatur
139. John Bobler, 1204 Third Avenue south, Decatur
140. A. Andrews, 1116 Third Avenue south, Decatur
141. W. H. Anderson, 227 Fifth Avenue west, Decatur
142. H. A. Griffith, 239 Fifth Avenue west, Decatur
143. T. L. Baker, 241 Fifth Avenue west, Decatur
144. J. M. Money, 315 Fifth Avenue west, Decatur
145. R. W. Wear, 403 Fifth Avenue west, Decatur
146. W. Poteete, 325 Fifth Avenue west, Decatur
147. J. J. Akers, 409 Fifth Avenue west, Decatur
148. J. W. Chandler, 513 Fifth Avenue west, Decatur
149. L. Latham, 515 Fifth Avenue west, Decatur
150. B. L. Delasham, 615 Fifth Avenue west, Decatur
151. L. E. Limbley, 621 Fifth Avenue west, Decatur
152. Green Henshaw, 711 Fifth Avenue west, Decatur
153. L. R. Henderson, 719 Fifth Avenue west, Decatur
154. H. Hardin, 723 Fifth Avenue west, Decatur

155. J. H. Vaughn, 714 Sixth Avenue west, Decatur
156. D. L. Blackwell, 301 Fifth Avenue west, Decatur
157. C. E. Livingston, 303 Fifth Avenue west, Decatur
158. G. W. Kiser, 401 Fifth Avenue west, Decatur
159. L. D. MacMillan, 407 Fifth Avenue west, Decatur
160. H. C. Kitchen, 319 Fifth Avenue west, Decatur
161. L. McKelley, 508 Sixth Avenue west, Decatur
162. M. M. Prayor, 510 Sixth Avenue west, Decatur
163. F. Bowers, 609 Fifth Avenue west, Decatur
164. R. L. Hopkins, 707 Fifth Avenue west, Decatur
165. W. Gray, 711 Fifth Avenue west, Decatur
166. W. F. McClusky, 717 Fifth Avenue west, Decatur
167. J. F. Gust, 1303 Fourth Avenue south, Decatur
168. H. L. Love, 721 Sixth Avenue west, Decatur
169. J. L. Eaton, 723 Sixth Avenue west, Decatur
170. R. Bradford, 1305 Fourth Avenue south, Decatur
171. J. H. Putnam, 1209 Fourth Avenue south, Decatur
172. Jim Rittle, 1117 Fourth Avenue south, Decatur
173. Allen Hanel, 1108 Fourth Avenue south, Decatur
174. J. B. Grooms, 1122 Fourth Avenue south, Decatur
175. W. L. Elnor, 1206 Fourth Avenue south, Decatur
176. M. G. Gardel, 1216 Fourth Avenue south, Decatur
177. Earl Henderson, 1308 Fourth Avenue south, Decatur
178. E. M. Hase, 1302 Fourth Avenue south, Decatur
179. Charles Citizen, 1314 Fourth Avenue south, Decatur
180. H. L. Wheeler, 1320 Third Avenue south, Decatur
181. P. B. Berry, 1322 Fourth Avenue south, Decatur
182. J. B. Jennigan, 1308 Third Avenue south, Decatur
183. A. B. Teague, 1206 Third Avenue south, Decatur
184. Billy Comesford, 1204 Third Avenue south, Decatur
185. M. Hunter, 1104 Third Avenue south, Decatur
186. J. Martin, 11 Prospect Drive, Decatur
187. J. A. Yarber, 13 Prospect Drive, Decatur
188. W. J. Vines, 105 Prospect Drive, Decatur
189. W. E. Pire, 205 Prospect Drive, Decatur
190. E. S. Johnson, 211 Prospect Drive, Decatur
191. Jack Dilehay, 207 Prospect Drive, Decatur

192. R. Collier, 305 Fifth Avenue west, Decatur
193. G. E. Almon, 311 Fifth Avenue west, Decatur
194. I. L. Harding, 409 Fifth Avenue west, Decatur
195. T. L. Allen, 511 Fifth Avenue west, Decatur
196. H. Mathers, 813 Fifth Avenue west, Decatur
197. E. E. Hudset, 817 Fifth Avenue west, Decatur
198. E. D. McCulloch, 819 Fifth Avenue west, Decatur
199. M. L. Brockens, 718 Sixth Avenue west, Decatur
200. R. E. Crapton, 721 Fifth Avenue west, Decatur
201. W. H. Reneger, 822 Fifth Avenue west, Decatur
202. W. Free, 818 Sixth Avenue west, Decatur
203. H. P. Pickens, 1120 Third Avenue south, Decatur
204. J. M. Reuels, 1118 Third Avenue south, Decatur
205. C. D. Lanion, 717 Fifth Avenue west, Decatur
206. J. R. England, 814 Sixth Avenue west, Decatur
207. C. A. Carter, 812 Sixth Avenue west, Decatur
208. E. D. Graves, 521 Sixth Avenue west, Decatur
209. Tom Ratliff, 517 Sixth Avenue west, Decatur
210. D. R. Barnett, 811 Sixth Avenue West, Decatur
211. M. Petty, 817 Sixth Avenue west, Decatur
212. W. H. Lisby, 701 Sixth Avenue west, Decatur
213. E. W. Elem, 707 Sixth Avenue west, Decatur
214. W. D. Cobb, 1223 Fourth Avenue south, Decatur
215. A. L. Garnett, 1215 Fourth Avenue south, Decatur
216. G. Little, 709 Sixth Avenue west, Decatur
217. P. A. Smith, 1316 Fourth Avenue south, Decatur
218. C. J. Hazelwood, 1318 Fourth Avenue south, Decatur
219. C. Kemp, 1322 Fourth Avenue south, Decatur
220. C. Babler, 1322 Fourth Avenue south, Decatur
221. L. E. Putnam, 1202 Third Avenue south, Decatur.
222. J. S. Willerford, 1112 Third Avenue south, Decatur
223. L. R. Hartongue, 1110 Third Avenue south, Decatur
224. J. W. Ezell, 613 Sixth Avenue west, Decatur
225. R. D. Nelson, 703 Sixth Avenue west, Decatur

Deponent spoke with many other residents of Decatur who, though not expressing themselves as violently as their townsmen said, among other things, that the "niggers have caused too much trouble and expense already." "They are guilty anyway, why have so many trials?"

Many were of the opinion that the two original complainants in the above case were as bad as the defendants, and that they should all be disposed of together. It was generally agreed, and so expressed, to your deponent, that regardless of the evidence which would come up at the trial, the defendants should be convicted and electrocuted, "so that the case would be ended once for all," and "stop the trouble with the niggers around here."

Not a single one of the many hundreds of Decatur residents with whom deponent spoke, thought that the Scottsboro defendants might be innocent and entitled to their freedom. This was the expressed opinion even where some professed themselves to be but mildly interested in the case itself.

Deponent lists hereunder the names and addresses of the residents in Decatur, where same could be procured. Deponent list these names as falling under the second category as above mentioned.

226. Fred Patterson, 707 Second Avenue west, Decatur
227. W. R. Compton, 711 Second Avenue west, Decatur
228. Walter Dailey, 715 Second Avenue west, Decatur
229. Herman Golwin, 710 Third Avenue west, Decatur
230. C. M. Hornell, 702 Third Avenue west, Decatur
231. H. Tony, 612 Third Avenue west, Decatur
232. W. R. Wallace, 516 Third Avenue west, Decatur
233. J. W. Stanford, 510 Third Avenue west, Decatur
234. P. D. McCarver, 509 Third Avenue west, Decatur
235. Roy Garrett, 613 Third Avenue west, Decatur
236. E. E. Fraser, 613 Third Avenue west, Decatur
237. W. H. Sampson, 701 Third Avenue west, Decatur
238. M. B. Thornton, 714 Third Avenue west, Decatur
239. Andrew Smith, 712 Fourth Avenue west, Decatur
240. W. R. Campbell, 616 Fourth Avenue west, Decatur
241. E. O. Hill, 324 Fourth Avenue west, Decatur
242. A. Nichols, 223 Fourth Avenue west, Decatur
243. D. L. Humphrey, 223 Fourth Avenue west, Decatur

244. W. Collins, 615 Fifth Avenue west, Decatur
245. W. L. Samuel, 516 Fifth Avenue west, Decatur
246. P. B. Newson, 308 Fifth Avenue west, Decatur
247. C. F. Justice, 214 Fourth Avenue west, Decatur
248. J. W. Loomis, 412 Fourth Avenue west, Decatur
249. C. N. Garrett, 207 Fourth Avenue west, Decatur
250. R. Robinson, 202 Fourth Avenue west, Decatur
251. J. L. Astor, 408 Fifth Avenue west, Decatur
252. M. McCutcheon, 418 Fourth Avenue west, Decatur
253. G. H. Wiggins, 601 Fourth Avenue west, Decatur
254. L. N. Robertson, 407 Fourth Avenue west, Decatur
255. E. Blaylock, 621 Fourth Avenue west, Decatur
256. A. L. Able, 610 Fifth Avenue west, Decatur
257. C. H. Gibson, 623 Fourth Avenue west, Decatur
258. W. F. Bush, 708 Fifth Avenue west, Decatur
259. T. Clem, 324 Fifth Avenue west, Decatur
260. W. H. Long, 226 Fifth Avenue west, Decatur
261. W. H. Lee, 701 Fourth Avenue west, Decatur
262. J. A. Garrett, 705 Fourth Avenue west, Decatur
263. D. McCary, 622 Fifth Avenue west, Decatur
264. R. G. Langley, 501 Fourth Avenue west, Decatur
265. S. T. Brown, 220 Sixth Avenue west, Decatur
266. T. O. Smith, 1202 Fourth Avenue south, Decatur
267. E. C. Wright, 1208 Third Avenue south, Decatur
268. C. T. Swatzell, 309 Fifth Avenue west, Decatur
269. R. H. Hacket, 607 Fifth Avenue west, Decatur
270. W. P. Walker, 608 Sixth Avenue west, Decatur
271. A. T. Ashford, 603 Sixth Avenue west, Decatur
272. R. E. Stamps, 1307 Fourth Avenue south, Decatur
273. G. Young, 1121 Fourth Avenue south, Decatur
274. Joe Toone, 1320 Fourth Avenue south, Decatur
275. Herman Phillips, 1122 Third Avenue south, Decatur
276. Lacey Terry, 109 Prospect Drive, Decatur
277. L. Hard, 515 Fifth Avenue west, Decatur
278. A. Allen, 509 Sixth Avenue west, Decatur
279. R. E. Raigon, 515 Sixth Avenue west, Decatur
280. Paul Fretwell, 713 Sixth Avenue west, Decatur
281. P. Siberts, 1108 Third Avenue south, Decatur

In view of all the above, deponent is convinced that the defendants in the case above entitled cannot secure

a fair trial in Morgan County and that defendants, witnesses and attorneys would be put in danger in life and limb.

JOHN WILLIAMS.

Sworn to and subscribed before me
this 14th day of November, 1933.

THELMA BOLDEN,
Notary Public.
(Seal)

Exhibit "H".

CIRCUIT COURT OF THE STATE OF ALABAMA,

MORGAN COUNTY.

MORGAN COUNTY.

against

HAYWOOD PATTERSON, et al.,
Defendants.

State of Alabama, }
Jefferson County, } ss.:

JIM JONES, being duly sworn, deposes and says: On August 22, 23 and 24, 1933, I was in Decatur, Morgan County, State of Alabama. I had occasion to speak with many of the Negro inhabitants of Decatur and in almost every instance the conversations ended in some expression of opinion on the so-called Scottsboro cases. I spoke with hundreds of Negro Decatur residents and have listed below the names, addresses and opinions of a number of them.

1. Hannah Shetby, 701 Grove Street, said that she was at the Patterson trial and was of the opinion that there was a "lynch" spirit right in and around the courtroom, and she felt that a fair trial could not be had in that courtroom in Decatur. She hoped that this case would be moved somewhere where the Negro defendants could be safe.

2. Lucille Rentle, 701 Grove Street, said that all through Morgan County a lynch atmosphere had been whipped up.

3. Lizzy Mosely, 705 Grove Street, felt that the Scottsboro boys could not get a fair trial in Morgan County and was very much afraid for them.

4. Hattie Martin, 714 Grove Street, said: "There is no need of even talking a fair trial." She didn't think the Scottsboro Defendants could get a fair trial in any part of Alabama. She said that since the Scottsboro cases had come up, Negroes all over were afraid for their own lives.

5. Callie Dane, 704 Grove Street, said that the case should be moved to a big place like Birmingham, where the police would protect the defendants, and where they wouldn't even need a state militia.

6. Eugene Stover, 402 W. Cherry Street, was certain that it would be dangerous to have the trial in Decatur.

7. Louise Johnson, 412 Cherry Street, said that since the last trial Negro women couldn't get jobs in Decatur any more. While she was working at a hotel in Decatur she made some statement favorable to the Scottsboro defendants and was promptly fired.

8. Carrie May Bailey, 402 W. Cherry Street, said that she knew before that the boys wouldn't get justice; that they wouldn't get it in that place.

9. Mattie Barker, Route 2, thought that the case should be taken away from Decatur.

10. Henry Simmon, 401 W. Cherry Street, said that if the case was heard in Decatur, there would be much bloodshed because of the lynch feeling there.

11. Savannah Stover, 402 Madison Street, felt that nowhere in the neighborhood of Decatur could the boys get a fair trial.

12. Carnella Smith, 416 W. Cherry Street, said: "Why, they just killed the Royal boy and he was only 16 years old. They're lynching them here right now. What's the use talking about the Scottsboro boys getting a fair trial here?"

13. Learlen Young, 419 W. Cherry Street, said that the Scottsboro defendants couldn't get justice in the first trial in Decatur and that they had no chance there again.

14. Jimmie Bufard, 526 W. Cherry Street, said that they would continue to lynch Negroes anyhow, and that he hoped the boys would be freed because he thought they were innocent.

15. Mary Pickett, 511 W. Cherry Street, said that the day after the Royal boy was killed, the negroes couldn't even go to the jobs in the white sections.

16. Louera Matthews, 518 W. Cherry Street, said that the only chance for a fair trial would be if the defendants were moved to a large city where they couldn't be lynched.

17. Emma Johnson, 526 W. Cherry Street, said she had followed the case from the beginning and from what she knew of Decatur the defendants would never be tried fairly there.

18. Rosie Kelley, 1017 Walnut Street, said that there would be more trouble if the boys were tried in Decatur. She said "The negroes are catching so much trouble now, if the case is tried here again, it will be too bad."

19. George Williams, 1017 Walnut Street, said that he was in court at the last trial of Haywood Patterson in Decatur. He heard a militiaman say that "Liebowitz and Ruby Bates ought to be killed."

20. E. J. Smith, 811 W. Vine Street, was afraid to even talk of the case, but said he hoped that the trial would not be in Decatur, for the boys' sake.

21. E. Hiter, 801 W. Cherry Street, hoped that the boys would get a fair trial. He said that if the case were tried around there, all the negroes would have trouble. He said: "I hope to God my son never gets into such trouble."

22. Archie and Mary Hiter of the same address were of the same opinion.

23. Lee Washington, 526 Cherry Street, said that he read about the case and if the case were taken back to Decatur, it would cause plenty of trouble and that all the negroes in Decatur thought the same way.

24. Vernard Garnard, 525 Cherry Street, said that he certainly wished the boys were free, because he felt that they were innocent.

25. Rachel Williams, 602 E. Cherry Street, said that she wished the case would be moved far away from Decatur.

26. Lank Jackson, 625 E. King Street, didn't think that the boys were guilty and hoped that they would get a fair trial.

27. Willie Harris, 524 E. Cherry Street, said that if the case were tried in Decatur, he would be afraid to stay in town.

28. Rosenbaugh Robinson, Route 4, box 9, said that if Thomas Brown was in danger of lynching, the Scottsboro boys surely would be, and that there would be trouble if the trials were held in Decatur.

29. Susie Smith, 320 Somerville Pike, said that she was at the last Patterson trial in Decatur, and heard a militiaman outside the courtroom that the militia wouldn't protect the boys from lynching.

30. Genie Hamilton, 320 Somerville Pike, repeated what her daughter Susie had said.

31. Mary Prince, 15 Pine Street, said that the Negroes were treated worse that ever before, that since the last trial negroes have been losing their jobs and that there was high feeling around Decatur against Negroes.

32. Calman Prince, 15 Pine Street, said that the Scottsboro defendants would never get a fair trial in Decatur.

33. Sennil S. Baker, 210 First Avenue, said there would be a lot of trouble when the case comes up again, and that all the negroes in the neighborhood were praying that the case would be taken way to a place where they'd have a better chance for a fair trial.

34. Elnara Whitiker, 14 Prince Street, said that she was asked by her employer what she thought of the Scottsboro boys. When she replied that she thought they were innocent she was laid off.

35. Sam Whitiker, 14 Prince Street, said that he didn't think the boys got a fair trial in Decatur.

36. J. D. Rice, 12 Pine Street, said he wished the case would be taken away from Decatur, that he had followed the case through from the evidence and thought the defendants were innocent.

37. Annie Rice, 12 Pine Street, said that it was getting worse for the negro in Decatur.

38. George Jude, 4 Pine Street, said he was sure the Scottsboro boys would be lynched if they were brought from Birmingham into Decatur.

39. Carrie Jude, 4 Pine Street, felt the same way about it.

40. Erleana Martin, 1116 E. Walton Street, said that mobs were being whipped up against the negroes and that if the case came up any further there would be lots of trouble, because of the recent killing of Royal and the attempted lynching of Thomas Brown.

41. Sarah Martin, 9 Spruce Street, hoped that the poor boys would be freed, and said that a negro couldn't hope to get justice in Decatur.

42. John Meadin, 617 Washington Street, said that the lynch spirit of Decatur was worse than ever before.

43. Lily Matthews, 9 Spruce Street, said that if the case comes up here again, "all us negroes will be chased around and given much trouble."

44. Sophia Toney, 22 Spruce Street, said she didn't think the Scottsboro boys could get a fair trial in Morgan County.

45. Lettie Maskin, 119 Maple Street, said that she was afraid of what would happen if the case was tried in Decatur.

46. Jones Maskin, 119 Maple Street, said that because a negro had just been shot down and killed in Decatur, the Scottsboro case should be taken away from there.

47. H. Jones, 116 Maple Street, said that there was a lynch atmosphere in Decatur, and wished she could help somewhat to get the boys a fair trial.

48. Catherine Jones, 116 Maple Street, sister of the above, said that it was a shame the way negroes are treated in Decatur.

49. Lee Harris, 16 Spruce Street, said he hoped the case would not be tried in Decatur again.

50. Annie Maskin, 115 Maple Street, said that from what took place at the last trial, it would be best if the case were taken to a city, where the defendants would be protected.

51. Orala May Pointer, 110 Maple Street, said that the boys didn't have a chance in Decatur, and that if the case were tried properly they would be acquitted.

As I have stated before, I spoke to hundreds of people in Decatur. Almost all of the Negroes said that they were being ill-treated and discriminated against more than ever before, since the Scottsboro cases had come up. That they hardly dared mention the names of any of the Scottsboro defendants or give any opinion as to the innocence of the Scottsboro boys.

From all that was told to me, I gathered that there was a fear hanging over all the negroes of Decatur that if the Scottsboro boys were ever taken back to Decatur for trial, they might never reach the court room. I hope that all this shows that the case should not be brought to Morgan County for trial but should be moved to a large city like Birmingham, where a fair trial may be expected and where in any event the defendants would be protected from any mob violence.

JIM JONES.

Sworn to before me this
28th day of August, 1933.

THELMA BOLDEN,
Notary Public.
(Seal)

Exhibit "I".

IN THE CIRCUIT COURT OF MORGAN COUNTY,

ALABAMA.

No. _____

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON, et al.,

Defendants.

State of Tennessee, }
County of Hamilton, } ss.:

Jim Jones, being duly sworn, deposes and says: That on October 22nd, 23rd and 24th, 1933, your deponent was in Decatur, Morgan County, Alabama. That he spoke with many of the negro residents of Decatur concerning the Scottsboro cases, and secured expressions of opinion from them as to the possibility of obtaining a fair and impartial trial in the above cases in Morgan County. Deponent noted the substance and effect of each of these conversations as soon after they were made as was possible, and records the substance and effect of such conversations hereunder, together with the names and addresses of those with whom he spoke.

Daisy Pitts, 55 9th Avenue, Decatur, Alabama. She said that she had attended the last trial and that it was the worse frame-up she had ever seen. She was certain that the Scottsboro boys could not get a fair trial in Decatur since the whole county of white people were against a fair trial in this case. She also said that there

would be much trouble in Decatur if the case were brought back for trial.

Truly Mosely, Route 1, Box 23, Decatur, Alabama. He said that the negroes didn't expect to get justice in Decatur, and that it would be suicide for the Scottsboro boys were they to be taken back to Decatur to stand trial.

Gus Baldin, Route 1, Box 25, Decatur, Alabama. He said that many of the white people in Decatur had spoken to him about the cases and that they are "mad as hell" about the case and that there would be a heap of trouble in Decatur.

C. C. Carmichael, 74 9th Avenue, Decatur, Ala. He didn't think they could get a fair trial the last time and certainly not the next time, because of the recent lynchings of negroes all over Alabama. He said there would be great danger from mobs which would be formed and that if the mob was large enough even the National Guardsmen would not be able to help.

J. W. Kelley, 130 10th Avenue, Decatur, Alabama. He said he wished the case would be taken far away from Decatur and that it was useless to even talk about getting a fair trial in Decatur.

Henrietta Collier, 714 3rd Avenue, Decatur, Alabama. She said that if the case were taken to Decatur, many of the negroes who had lived in Decatur for many years would leave town for fear of their lives.

Gertie Byers, 3rd Avenue, Decatur, Alabama. She said that a lynch sentiment was being whipped up in the vicinity and that it would not be difficult for a good sized mob to "get" the Scottsboro boys and every body else concerned in the trial.

George M. Spragins, 3rd Avenue, Decatur, Alabama. She said she was afraid for her own boys to walk the streets

because of the trouble around Decatur, and that the Scottsboro didn't have a chance for a fair trial here.

Wira M. Spragins, 3rd Avenue, Decatur, Alabama, didn't want to say much about the case.

Wash Spragins, 3rd Avenue, Decatur, Alabama. He said the Scottsboro negroes never got a fair deal in Decatur, and that he didn't think they could get a fair trial in any place in Alabama. He said he wish the case could be taken to Chicago or some other place like that.

Hubert J. Cobs, 1010 Vine Street, Decatur, Alabama. He said that he wished there was some way he could help the Scottsboro boys, because there was no chance of their getting a just hearing in Decatur, and that "it would be hell" if the case came back to Decatur, and that it was his opinion that every negro in Decatur felt the same way about it. He was sure that this time there would be a mob much greater than before.

Robert Mastin, 512 LaFayette Street, Decatur, Alabama. He said that he had lived in Decatur for about thirty years and that the situation now, insofar as the treatment of negroes is concerned, is worse now than ever before. He said he was afraid for his own family to go out into the streets of Decatur at night. It was his opinion that if the Scottsboro boys started out from Birmingham to go to Decatur for trial they would never reach the Court House alive.

Lucile Miller, 316 3rd Avenue, Decatur, Alabama. She said she didn't know very much about the case, but that what she had heard from others, and she thought that the boys could not get a fair trial in Decatur.

D. W. Fitzgal, 402 3rd Avenue, Decatur, Alabama. He said it would be the worse possible move if the trial of the Scottsboro boys were held in Decatur. He said he had been living right in Decatur for twenty-five years

and that he expected that if any trouble started he would leave Decatur. He said he had heard this sentiment from many in Decatur. He thought there was no use to even talk about a fair trial.

Catherine Thomas, 402 3rd Avenue, Decatur, Alabama. She was afraid to say much about the cases except that there was no doubt that they could not get a fair trial in Decatur, and that all the negroes in the vicinity were scared when they heard the case was coming back to Decatur in a short while.

J. T. Fitzgal, 402 3rd Avenue, Decatur, Alabama; he said that the boys didn't get a fair trial in Scottsboro or Decatur and that there was no reason to believe that they would get justice in Decatur at the next trial.

Ester Fitzgal, 402 3rd Avenue, Decatur, Alabama. She says that since these cases have come up all the negro mothers in Decatur have been afraid for the lives of their sons, and she expected that if a mob came in town that there would be a lots of trouble for all concerned in the trial, and also for negro residents in Decatur, who are fearful of what is going to happen.

Emmett Steward, 402 3rd Avenue, Decatur, Alabama. It was his opinion that the Scottsboro boys could not get a fair hearing in any part of Alabama, because of the recent lynchings of the negroes accused of raping white women. He said it wouldn't do any good even if it were brought into the large cities of Alabama.

Charlie Black, 502 2nd Avenue, Decatur, Alabama. Said he wished the case could be taken away from Decatur for it wasn't at all possible that they could be fairly tried there.

Rosie Black (wife), 502 2nd Avenue, Decatur, Alabama. She was afraid her own boys would be given trouble if the case came back to Decatur, and that she would be

very happy if the case was taken some place where the Scottsboro boys would have the chance of a good trial.

Emma Draper, 507 3rd Avenue, Decatur, Ala. She said she was afraid of real blood shed at the time of the next trial and she wished it was possible somehow to take the case far away from the state of Alabama. There wasn't a place in the State where negroes could be tried fairly and without danger when such charges were involved.

Paris Draper, (husband) and John Draper (son), 507 3rd Avenue. They generally agreed with what mother Draper said.

Jessie Jackson, 507 3rd Avenue, Decatur, Alabama. He said that he hoped that the lawyers could get the case out of Decatur because all the negroes there were very much afraid of what would happen. He said he didn't think the Scottsboro boys could get an impartial verdict in Decatur.

Bessie Jackson, 613 Cherry Street, Decatur, Alabama. She said it was a dangerous situation for everybody, having the cases to come again in Decatur, and that all the negroes in Decatur would need protection from the mob spirit that was bound to arise about the time for the trial.

E. Jones, 505 3rd Avenue, Decatur, Alabama. Said there wasn't a chance for fairness in Decatur, and that it was known all over Decatur that a negro boy of sixteen had been killed by a mob a few weeks ago without even having a charge against him. That it would be ten times worse when the time came for the case to be heard and that all negroes in Decatur "hoped to God" it would not come there.

J. M. Vaughton, 1010 Vine Street, Decatur, Alabama. He said he believed that there would be much trouble in Decatur and that the case should be taken to a very large city where the boys would at least get protection from

mob violence. He further said that those boys should have been released a long time ago.

Lucille Williams, 1004 Vine Street, Decatur, Alabama. She said she had no doubt that there could not be a fair trial given to the Scottsboro boys in Decatur.

Robert Pane, 900 West 1st Street, Decatur, Alabama. He said that the Scottsboro boys are as good as lynched now if they ever think about bringing them back to Decatur. He further said that he had overheard white people saying "those niggers ought to be killed", and that he would be afraid to stay in town, the same as many others, if the case came back for trial into Decatur.

Mr. & Mrs. McCargles, 1000 Vine Street, Decatur, Alabama. They said they had been living in Decatur for many many years, but they never saw such a time as this. They were very much afraid that there would be blood running if the Scottsboro boys were taken into Decatur. They also said that mobs would be out to get Liebowitz and others in the case and that they had overheard white people say in the streets of Decatur: "He (Liebowitz) is a nigger lover. He ought to be lynched with the Scottsboro niggers." By all means they felt that the case should not be allowed to come to Decatur.

Stephen Wind, 827 Church Street, Decatur, Alabama. He said there wasn't a chance of getting a fair trial in Decatur. He heard that mobs were being formed and that a lynch sentiment was being whipped up in the vicinity and that once they get started it wouldn't take but a few minutes to get the job over with.

Kate Hall, 827 Church Street, Decatur, Alabama. She said she wished she could help in some way to keep the case from coming to Decatur. There would be lots of trouble and no chance of getting a fair trial.

Oscar Maze, 831 Church Street, Decatur, Alabama, didn't want to say much about the case.

Willie Mase, 831 Church Street, Decatur, Alabama. He said that if it would help the Scottsboro boys at all he would give his name as one who opposed the idea of bringing the case to Decatur.

W. Parr, 818 Church Street, Decatur, Alabama. He said that you couldn't pick a place in Alabama where there was no strong prejudice against negroes who are charged with crimes such as this. He said it didn't make any difference where the case went since they couldn't get a fair trial anyway.

Deponent spoke to hundreds of negro residents whose names he could not secure because of the fear, very often expressed, that they themselves would be made the victims of the lynch spirit now prevailing in Decatur. Almost every person deponent spoke with were unanimous in emphatically declaring that the Scottsboro boys would and could not get a fair trial in Decatur, and that it would be extremely dangerous for the defendants themselves, the witnesses and the lawyers to attend the next trial. It was the common understanding in Decatur that an organized mob would be formed composed of residents of Decatur, the immediately outlying districts and from adjoining counties to prevent a trial from even being held and the "string up" the Scottsboro boys, the lawyers, (especially Mr. Liebowitz) Ruby Bates, Lester Carter and the other witnesses and any one else who dared to concern himself in the case when it came up for trial.

It is deponent's own opinion from what he has heard and seen that the Scottsboro defendants could not possibly secure a fair and impartial trial in Morgan County.

JIM JONES.

Subscribed and sworn to before me on this the 27th day of October, 1933.

G. W. Chamlee, Jr.,
Notary Public,
(Seal) Hamilton County,
Tennessee.

Exhibit "J".

CIRCUIT COURT,

STATE OF ALABAMA,

Madison County.

STATE OF ALABAMA

against

HAYWOOD PATTERSON,

Defendant.

State of Alabama,
County of Jefferson, } ss.:

David Schriftman, being duly sworn, deposes and says: That he is an attorney and a member of the bar of the State of New York.

That he was in the towns of Falkville, Hartselle, Danville and Decatur, all in Morgan County, State of Alabama, on the 2nd day of September, 1933, and had numerous conversations with many residents of these towns, on the street, inside and outside of the stores and in public places generally, with reference to the "Scottsboro" case.

From conversations so had in the various parts of Morgan County, deponent is of the opinion that the defendants, witnesses and lawyers for the defense, and anybody associated with the defense will be exposed to serious danger should the above case be brought to Decatur for trial.

Your deponent is also of the opinion that a juror could not be chosen from the whole of Morgan County who has

not heard of or read of this case and who has not a definite opinion as to the guilt of the defendants.

Deponent draws these conclusions from statements actually made to him by residents of Morgan County and from opinions generally expressed. It was at no time necessary to draw any inferences or guess at meanings. The residents of Morgan County with whom deponent spoke did not veil their threats or couch their language in any uncertain terms. The "Scottsboro" defendants were threatened with lynching if ever they were brought back to Decatur for trial. Residents of the county were vehement in their avowals "we'll get one more whack at these damn niggers when they're brought back to Decatur." Such expressions were heard as "The black bastards should have been taken out and swung to a tree before. We'll make sure this time." "The Scottsboro niggers have cost too much already. We'll get it all over with when they're brought here (Decatur) again." "Just a bit of rope, and it will be over with." "That'll stop the raping of white women here."

These are typical examples of the expressions of the sentiment in Morgan County. It was said time and time again that if the defendants did manage to survive the trial and were acquitted they would never get out of the county alive, "Guardsmen or no Guardsmen."

Residents of Decatur expressed satisfaction that they had managed to shoot and kill James Royal, a young negro, on August 28th, 1933, who was about to be apprehended by authorities and questioned as to whether he was involved in the alleged raping of a white woman. James Royal was killed before any charge had even been placed against him. Another negro, Thomas Brown, also alleged to have been involved in the raping, was apprehended by the Sheriff and charged with the crime. Three unsuccessful attempts were made by a "mob" composed of residents of Decatur and nearby towns in Morgan County, to forcefully take Thomas Brown from

the Sheriff's custody in order to lynch him. The Royal and Thomas case has greatly aroused the inhabitants of Morgan County. They say the "law is too slow." "We'll take care of him ourselves like was done to the other niggers."

Deponent has examined the affidavit of John Williams, sworn to the 2nd day of September, 1933, and is not surprised that therein is stated the names of some of the residents of Decatur who openly and proudly admitted that they were a part of the "mob" that went to "get" Thomas Brown. Deponent has heard many similar statements.

Residents of Morgan County had nothing but praise and admiration for the "mob" in Tuscaloosa that shot and killed two negro defendants and severely wounded another while the negroes were being removed by the Sheriff's deputies to a place of safety.

It was indicated in no indecisive language that such would be their course in the "Scottsboro case." "The niggers will never leave Morgan County, trial or no trial."

The witnesses for the defense in the last trial of Haywood Patterson at Decatur were threatened with the same fate as the defendants themselves. "That Ruby Bates and Lester Carter had been brought over with Jew money from the north. They ought to be hung together with the niggers." And that "Decatur won't be a safe place for them if they ever come back here again."

Intense hatred was manifested for counsel for the defense. As one resident in Decatur said, "If them lawyers, especially that Jew lawyer, Leibowitz, comes here, it will be a one way trip. We missed him last time at the trial. He will never go back to New York if he comes here again and we'll take the others too."

Others said "Can't account for what's going to be done with them lawyers if they come here, even that Chattanooga lawyer, Chamlee, too." Deponent was shocked at the intensity and heat of these remarks and at the determination of the inhabitants of Morgan County to lynch all the defendants and those participating in the defense and to "settle this damn Scottsboro case once for all."

After the lynching of James Royal in Decatur and the killing of the two negro defendants in Tuscaloosa, the entire country, as manifested by the press, has condemned such murderous action on the part of "mobs" in Alabama.

Your deponent is of the opinion that if the "Scottsboro" cases are brought to Decatur for trial, it will be the signal for the most horrible of catastrophies that the south has yet witnessed.

In deponent's opinion, Jefferson County is the only county in Alabama because of its size and metropolitan character where all those concerned in the defense would be safeguarded from injury and where it may be possible to select a jury that will weigh the evidence and decide the innocence or guilt of the defendants without being swayed by prejudice or hate.

DAVID SCHRIFTMAN.

Sworn to before me this
14th day of November, 1933.

THELMA BOLDEN,
Notary Public.
(Seal)

Exhibit "K".

IN THE CIRCUIT COURT OF MORGAN COUNTY,

ALABAMA.

No. _____

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON, et al.,

Defendants.

State of Tennessee, }
County of Hamilton, } ss.:

GEORGE W. CHAMLEE makes oath in due form of law:

That he is one of the attorneys in the defense of the case of the State of Alabama vs. Haywood Patterson, and that he has read the affidavit of Joseph R. Brodsky, verified the 14th day of April, 1933, and the affidavit of Joseph R. Brodsky, verified the 12th day of May, 1933, made for the purpose of correcting and supplementing the said affidavit of April 14, 1933, and the said affidavits are substantially correct, as he verily believes, some of the allegations being based on information and belief and some on affiant's knowledge.

It is absolutely true that on the 17th day of April, 1933, while on the way to the Court house in Decatur two persons jeered at counsel while on the streets and showed signs of hostility, and after reaching the court house this

affiant was shown by his Honor Judge Horton, a copy of the Decatur Daily, a newspaper published in Morgan County, and two other citizens, prominent white men of Decatur, Alabama, discussed with this affiant matters published in the paper referred to by the Court and which extracts from the paper had been made a part of the record by the opinion of His Honor in the case of the State of Alabama v. Charlie Weems, herein referred to, and for the purpose of this motion made a part of this affidavit for the purpose of having it read on the motion for a change of venue for Haywood Patterson and in support thereof.

The two citizens last referred to told this affiant that if Mr. Liebowitz appeared on the 17th day of April it was quite certain that some of the jury that tried the case of the State vs. Haywood Patterson would assault him and inflict upon him bodily harm and that other citizens of Decatur might take reprisals on him, and the atmosphere with reference to the trial of Haywood Patterson was in no sense sympathetic, but on the contrary was hostile to the prisoner and his counsel, in affiant's judgment because of the charge, in the first place, that a negro had assaulted a white woman, and in the second place, there was hostility because the question was being made relative to negroes being systematically excluded from the juries in Jackson County for about sixty years and in Morgan County for more than thirty years.

Affiant further states that his home is near the Alabama line. That he has had more or less business in the Courts of Alabama for more than thirty years and in his opinion it is a fact that is not open to question that in the state courts negroes do not sit on jury in any county in northern Alabama and that it is a matter of custom of many years standing that negroes are not placed on the jury list and the names not placed in the jury box but that the courts are conducted, as far as he knows, entirely by white jurors. Affiant states on information that in some of the federal courts in Alabama negroes serve on federal juries.

Affiant further states that while the trial of Haywood Patterson was in progress two witnesses from Chattanooga, Tennessee, attended the trial—one of them named Beatrice Maddox and one of them named E. L. Lewis and that these witnesses reported to this affiant that they had been insulted and threatened while in Decatur merely because they were witnesses and that E. L. Lewis lived in Chattanooga, the same city where affiant lives, and a picture of the home of E. L. Lewis was exhibited at the trial showing the place where he claimed Victoria Price, Ruby Bates, Lester Carter and Orville Gilley spent the night of March 24, 1931.

On the 17th of April, after this trial, the home of E. L. Lewis was burned, and neighbors of E. L. Lewis as well as E. L. Lewis himself, tell affiant they are of the opinion that this house was destroyed by fire because E. L. Lewis was a witness in this case.

Affiant further states that he has visited the City of Decatur on numerous occasions in the summer and fall of 1933 and that he has visited at hotels, restaurants, stores and public places and discussed the Scottsboro case on the streets and at various places in Morgan County, and that he has visited in Athens, Alabama, Huntsville, Alabama and Scottsboro, Alabama, as well as other places, and that there was great bitterness and resentment against the defendants and especially against Mr. Liebowitz, one of the attorneys in this case, and in such cases bitterness against the lawyers operates against the client on trial and makes difficult any chance for him to get justice when there is bitterness against his counsel.

Many political or semi-political questions may arise or appear to be raised, relating to matters of history in the State of Alabama.

In about 1901 the State of Alabama had a great campaign for the adoption of the section of the Alabama con-

stitution sometimes referred to as the grandfather clause, but whether designed to do so or not, had the effect of disfranchising the negroes in many counties, and also to make difficult their qualification for jury duty, and as a result negroes have been excluded from the juries in practically all of the counties in and near Morgan County for thirty years, and the present generation have been schooled, in a school of thought, that only white men should sit on juries and that only white men should hold office and do the voting and conduct the business of the State or county, as the case may be, and when it was suggested by the defendants, that under the Federal Constitution they were being deprived of Federal right of due process of law, this suggestion was resented and the bitterness due to this resentment was carried into the jury box and will continue to be carried into the jury box if this case is tried in Morgan County, perhaps, and it is exceedingly difficult to figure out any plan whereby these defendants could obtain a fair and impartial trial when these issues are pending and have to be determined in advance of such a trial. There has been so much bitterness that some persons interested in the prosecution have sought to inflame the people, because of that bitterness and because of the charges made against the defendants, who were negroes, and the prosecution made by a white woman, alleged to be a member of the underworld, and this bitterness has reached such a stage that notwithstanding the reputation of the prosecuting woman, many people are willing to take her word, as the basis for a bitter fight against these defendants, apparently forgetting and ignoring the idea that they were put on juries for the purpose of administering justice and not to carry out merely a political idea or a campaign to humiliate members of the black group.

Affiant further states that recently E. L. Lewis died and is reported to have become suddenly and violently ill between six and seven o'clock and to have died about two hours later, whereas prior to that time he had been on a hunting trip and was apparently in the best of

health, but before affiant heard of his condition he had died and was buried and grave suspicions are now entertained that he was poisoned. When E. L. Lewis attended Court in Decatur, at the time of the trial of Haywood Patterson, his house was destroyed by fire. Not long thereafter he reported that he was threatened with violence by parties whose names are unknown, in the town of Decatur, and after he returned to Chattanooga he reported to affiant that two white men had been to his house at Chattanooga in a large automobile and one of them had offered him money and financial assistance if he would agree not to return to Decatur to the next trial and he also stated that he was afraid that something would happen to him, because he had lost his home and his furniture and personal property, and he was afraid something would happen to him. Whether he died from natural causes or unnatural causes, affiant cannot state, but his home was on the edge of the woods known as the hobo jungles at Chattanooga, where tramps and persons who steal rides on trains congregate and assemble and where Lewis swore that Victoria Price spent the night when she was in Chattanooga, whereas she claimed that she spent the night at the home of a woman named Callie Broochie on 7th Street in Chattanooga, Tennessee; that affiant has published in newspapers at Chattanooga statements that one hundred dollars reward would be paid to find said Callie Broochie, because affiant believed that there was no such person in existence and that he had resided in Chattanooga for forty years with his office on 7th Street and that Seventh Street was a short street running by the side of the Court house and through the business district and that he had made inquiry and examined the city directories and was unable to find any persons that ever heard of Callie Broochie in Chattanooga, Tennessee, and that in his opinion there was no such a person living in Chattanooga or had lived in Chattanooga within the last forty years, and the story that Callie Broochie operated a boarding house on Seventh Street in March, 1931, in Chattanooga, in his opinion was untrue and without the slightest foundation in fact.

Affiant states that on November 6th, 1933, a friend of his, Mr. William Williams, told affiant that he had been to Scottsboro, Alabama, and that the bitterness in that section against the defendants, in the above styled cause, was particularly bad and especially among the rough element, such characters as would be expected to join in a mob or to start trouble if they had a chance and that there was no chance for a fair trial in that section of Alabama.

Affiant further states that another friend of his from Alabama was in his office in Chattanooga on November 6th, 1933 and stated that in Cullman County, which adjoins Morgan County, that the bitterness against the negroes was intense and that he was sure there was great bitterness in the southern part of Morgan County, because many people in that section naturally hated negroes anyway.

G. W. CHAMLEE.

Subscribed and sworn to before
me November 7, 1933.

G. W. CHAMLEE, Jr.,
(Seal) Notary Public,
Hamilton County, Tennessee.

Exhibit "L".

Editorial Appearing in the "Community Builder" of Friday, November 3, 1933.

ALABAMA, FRIDAY, NOVEMBER 3, 1933.

THOUGHT INTERNATIONAL LABOR DEFENSE HAD DISBANDED.

Prior to reading a certain news story carried in the various daily newspapers last Sunday, The Community

Builder had felt and hoped that what is known as the International Labor Defense League, with headquarters at New York, had disbanded and there was no such organization in existence now. However, the following news item, sent out from Baltimore, Md., last Sunday and appearing in Sunday morning's papers, indicates conclusively that such an organization is still muchly alive and there is nothing its leaders will refrain from attempting to do in order to raise money. The news item date Baltimore, Md., Octo. 28th, follows:

> "A state police guard tonight stood over the grave of Euel Lee, hanged negro, who was buried today after Maryland penitentiary officials had won a legal battle for his body.
>
> 'Shoot to kill' if anyone offered resistance to the state conducted funeral, had been the order given deputy sheriffs who guarded the funeral.
>
> The order came from Judge Eugene O'Dunne of the Baltimore circuit court, who dismissed the temporary injunction against the funeral, secured by Bernard Ades, attorney for the communistic International Labor Defense League.
>
> Ades contended that Lee had 'willed' him the body. He wanted it, he said, to take to New York for a public funeral and demonstration."

As the Community Builder stated last week, the retrials of the negroes involved in the Scottsboro cases are scheduled to start in Decatur the 27th of this month. And in face of the feeling that exists at Decatur, as well as throughout the Tennessee Valley, against any lawyers claiming to represent the International Labor Defense League, we suggest that it will not be well for these lawyers to again show up on any soil at any point within this valley. We do not need that type of cattle down here, and their further appearance is wholly unneces-

sary. There are plenty of able lawyers here in North Alabama, who, if appointed or employed by the court, will see to it that the negroes to be tried at Decatur are given the proper representation.

Exhibit "M".

Editorial Appearing in the "Community Builder" of Friday, October 27, 1933.

NEGROES INVOLVED IN SCOTTSBORO TRAGEDY TO BE TRIED NOVEMBER 27.

Announcement was made by Judge W. W. Callahan of the Morgan County Circuit Court at Decatur Thursday, October 19th, that a special term of court would be called for November 27th, to again try the seven negroes involved in the Scottsboro tragedy that occurred something over two years ago at which time two white girls were alleged to have been assaulted while riding on a freight train. The above decision was reached after Judge Callahan had a conference with Judge James E. Horton and attorney general, Thos. E. Knight. The negroes to be re-tried are now, and have for some time been confined in the Jefferson County jail.

Judge Callahan, after the conference, issued a formal statement consisting of one sentence, saying:

> "At the request of the attorney general of the state and the suggestion of the chief justice of the Supreme Court of Alabama, I will call a special term of the circuit court of Morgan County to convene on November 27, 1933, for the purpose of trying the Scottsboro cases."

There were no attorneys who claim to represent the International Labor Defense League present when above announcement was made. And in view of the manner

in which the so-called attorneys from New York conducted themselves at previous trials of the Scottsboro case at Decatur. This newspaper feels that in fairness to the citizens of the Tennessee Valley as a whole, the negroes to be retried and especially lawyers hailing from the eastern states, that these particular lawyers remain at home and not make their further appearance at Decatur, to defend negroes involved in the Scottsboro case or otherwise.

Fact of the business is we do not believe one man by the name of Samuel S. Liebowitz has little enough sense to again make his appearance within the borders of the Tennessee Valley.

The Community Builder will have a special representative stationed at Decatur to report what happens daily at the re-trial of the cases that originated at Scottsboro.

Exhibit "N".

IN THE CIRCUIT COURT OF MORGAN COUNTY,

ALABAMA.

No. ____

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON, et al.,

Defendants.

State of Tennessee, }
County of Hamilton, } ss.:

CLAUDE PATTERSON makes oath in due form of law that he is a citizen of Chattanooga, Hamilton County, Tennessee, and that he is the father of Haywood Patterson, one of the defendants above named.

Affiant states that he was in Decatur at the time of the last trial of Haywood Patterson in April, 1933, and that while affiant was on the streets of Decatur he heard many threats of violence against the defendants in the above case and against the lawyers for the defense and against any one else concerned in the case.

Affiant heard one of the residents of Decatur say, referring to the attorneys, Mr. Brodsky, Mr. Liebowitz and others who were with them, and who were passing the street at that time on their way to the Court house, "Here comes those damn jew lawyers; they ought to be killed trying to defend those damn niggers."

Affiant spoke with many of the negro residents of Decatur at the time above mentioned and it was the general opinion of most of them that all the white people in Decatur and the territories in Morgan County were "dead against" the Scottsboro defendants.

Affiant has been advised and upon information and belief knows that E. L. Lewis, one of the Chattanooga witnesses at the last trial at Decatur died on October 13, 1933, from causes unknown to affiant. Affiant is of the opinion that the said E. L. Lewis may have been poisoned in an attempt to keep him from testifying at the next trial. Affiant bases this opinion on the fact that he was told by the said E. L. Lewis, deceased, a few weeks after the last trial at Decatur that some white people had come to the home of the deceased in Chattanooga and warned him that if he dared to come to Decatur again to testify in behalf of the Scottsboro defendants that he would never return back to Chattanooga. Affiant knows that the house of the deceased was burned down a short while after he left for Decatur to testify in the above styled cause.

CLAUDE PATTERSON.

Subscribed and sworn to before me on this
the 3rd day of November, 1933.

G. W. CHAMLEE, Jr.,
(Seal) Notary Public,
Hamilton County, Tennessee.

Exhibit "O".

COVER PAGE:

A REPLY TO SOUTHERN SLANDERS.

In Re: The "Negro Question" "Lynch Law" etc.

Being: An invitation to "The International Labor Defense" and all other associations advocating social and political equality to "GET OUT OF" and "REMAIN AWAY FROM" the State of Alabama. We regard your teachings as dangerous and a MENACE to our State.

Brief and Argument

by

WOODFORD MABRY

Attorney at Law, Grove Hill, Alabama.

FLY LEAF:

A REPLY TO SOUTHERN SLANDERS

In Re: The "Negro Question" "Lynch Law" etc.

FOREWORD:

UNTIL THE ADVENT of the INTERNATIONAL LABOR DEFENSE and similar organizations into the south with their dangerous teachings of Social Equality, Socialism, etc., never since emancipation have the relations between the white men and the law abiding negroes of the South been so cordial, or the confidence of the negroes in their white neighbors and employers so strong. Let it remain so, AND IT WILL, if you keep out of our state with your dangerous teachings, which, will beyond the peradventure of doubt result in UNTOLD HARM AND INJURY TO THE POOR IGNORANT NEGRO. You pretend to be his friend, if you

are, and cannot see that it is for his best interest and YOURS that you let him alone, then you are blind and FOOLISH. The SOUTHERN WHITE MAN KNOWS THE NEGRO and the NEGRO KNOWS THE SOUTHERN WHITE MAN.

The BEST HOPE of the negro of the South lies in the continuance and cultivation of these relations and the education of his children on PURELY PRACTICAL lines.

WE WILL NOT PERMIT YOU to enter the South with your teachings, in an effort to stir up STRIFE and DISCORD between the races, and we INVITE YOU to STAY OUT.

It seems so strange that little or no comment is made by northern papers when their own people make an effort to lynch a negro who attacked a white woman in the City of New York recently. (See Appendix).

A REPLY TO SOUTHERN SLANDERS.

The first plea that Robert E. Lee uttered after he had laid down his stainless sword was for the reconciliation of the lately warring sections of this country.

In his poverty, turning his back upon what we must term urgent invitations to ease and plenty, for we would wrong that great and lofty spirit to call them temptations, he dedicated himself to the service of the young men of the desolated South and the first words he addressed to them as they waited for him to point out the path which they were sure would be the way of honor and righteousness went out in an appeal from the depth of his great heart that they should remember that this was their reunited country to whose common flag and fortunes they should feel bound, alike by the pledges of their fathers and their own highest sense of duty.

In the hour of his hard won triumph Ulysses S. Grant, by his generosity of soul did more than all the statesmen

of his time to win back the South to the Union in sympathy, as well as in name.

And, standing, in Georgia's Capitol, that gracious and loving man touched the hearts of the whole country when he said that not the South alone, but the whole nation, should take a pride in the deeds of the men who fought and fell in the gray and should care for their graves. That was indeed a splendid sentiment, expressed by one of the truly great men of the North.

I wish that every part of the republic could be pervaded by the broad patriotism which holds that the man, north or south, who relumes the embers of sectional hate is the enemy of his country and brands himself unworthy of his high national birthright.

Prejudice between the North and the South, if indeed attention to facts and argument to the grand end that we may keep our race pure and advance the best interests of the Republic.

I do not for one moment question the sincerity of your honesty, but I can not drum up much respect for your judgment. You should not doubt our sincerity or our honesty, and the question as to whether you will admire our judgment depends upon the candor with which you will consider our views, and the frankness with which you will enter into deliberations on the subject.

If you are right, we want to know it, and if we are right, you should want to know it. I yield to no man in there be any, should be put aside and we should pay my admiration for our institutions. I yield to no man in my pride of race. I believe that no question can be settled until it is settled right.

Let us discuss the negro question and other questions with which we are now confronted, fairly and squarely, and if you think I am wrong, I hope that you will doubt a little more than you ever did before. Facts are facts,

arguments are arguments, and the man who brings the strongest facts and the best arguments will, in the end, prevail. The sunlight of truth will always break through all obstructions. Therefore, let us reason together in the spirit of friendliness.

Speaking for myself, alone, I would make this in fact, as in theory, a white man's government. I would grant to all men the fullest legal rights, but I would deny political privileges to the yellow man, the red man the brown man and the black man. We do not need these people in our civil or military service. Their presence there is a source of constant friction, trouble and danger. It is better for the negro himself to be deprived of privileges which cause him to be antagonized and which he is unfitted by nature to exercise. If the blacks do not wish to live here under the rule of whites, let them return to their native land where they can revel in the delight of voting and office-holding.

We owe the negro nothing. We found him a naked, snake-worshipping savage, and conferred upon him all the polish of civilization that he is competent to receive. We have taught him the use of tools, opened to him all the avenues of knowledge and supplanted his serpent fetish with the Christian faith. Having lifted him out of savagery, we are under no obligation to bear him ever on our shoulders. Maybe, it were charity to do so, but charity begins at home. "The man who provides not for his own household is worse than an infidel."

There is a soft spot in my heart for "Uncle Remus" and the "ole black mammy" with her crooning lullabies and corncob pipe. I was nursed from my infancy by one; but we are confronted now, not by these faithful servitors, but by the elective franchise "colored gentleman" and this modern "colored gentleman" has thrown but little light on the labor problem of the South, for as soon as he begins to learn "hic, haec, hoc," it's goodbye "gee, whoa, haw buck."

And speaking for myself alone, I would, if I could, restrict the schooling of the negroes to reading, writing and arithmetic. As a general rule, that is as much as they can absorb to advantage. A negro crammed on Latin, Greek, or on Physiology and Geometry, is a ruined nigger. After that he is too proud to work and has to live off the wages of some hired girl or industrious wife.

About the second year after the war a school teacher from up North came to one of the South Alabama counties and started the first nigger school in that county. She fixed the class so that every one knew his place, and it has been related that she trained each particular one to answer a particular question.

She would start with the one that stood head and ask him:

"Who made you?"

And he would answer promptly:

"God made me."

She would ask the one that stood second:

"Who was the first man?"

And he would answer, "Adam."

And so on down the class. Every one had learnt the answer to his particular question and said it over till he got it by heart. One Friday afternoon the teacher gave an exhibition to demonstrate what progress she was making. One of the scholars had to take the bucket and go to the spring after water, and while he was gone the teacher called out the class in Bible study. In the general confusion she didn't notice that the head scholar of the class was out of place, and so she put the first question to the one that stood second:

"Who made you?"

"Adam", said the scholar.

"No, no, that isn't right," said the teacher. "Try it over."

The scholar tried and tried, but he didn't know anything except "Adam" and "Adam" he would have it.

"Didn't God make you?" said the teacher.

"Nome, he didn't," said the scholar. "Dat nigger what God made has done gone to the spring to fetch some water."

The taxing of poor white people to furnish HIGHER EDUCATION for negro wenches and sassy bucks, is an OUTRAGE upon the WHITE and an injury to the negroes. The schools and colleges are turning loose on the country thousands of negro men and women who have been taught a smattering of the higher branches and who, in consequence, consider it beneath their dignity to work with their hands. There is absolutely no place in this land for the arrogant, aggressive, school-spoilt Afro-American who wants to live without manual labor. Therefore, it is a cruelty to the negro, as well as an injustice to the whites, to tax the latter to give "higher education" to the former.

The only salvation for the negro in America is the acceptance, in good faith, of his legal rights as the full measure of what is due him. The sooner he abandons his attempt to share political power and privileges with the whites, the better for him.

The white man made this civilization, THE NEGRO NEVER MADE THIS OR ANY OTHER. He has degraded every governmental system that he has been allowed to influence. The yellow men and the brown men cease to be savages; cease to be barbarians; evolve a

civilization, erect temples, purify their religion, rear palaces, refine their manners; adopt systems of jurisprudence, of government, of education; develop arts and sciences. Even black men, not negroes, do something of the same sort. The ancient civilization of the Hindu and the Moor was the very highest that the world had then known, if we exccept that of Greece. And the moral teachings of ancient Hindustan were not inferior to those of any nation of antiquity, but the negro in his native land, sat squat in his degradation, moved by no inner promptings to lift himself and improve his surroundings. I believe that our Caucasian friends in the North have been misguided and misinformed and therefore have acted and are now acting upon the idea that the negro is a Caucasian painted black. As a duty to our forefathers, to ourselves and our posterity, we must see to it that the negro makes no Haitian hell of the United States of America.

In the South, the aggression of the Socialist and the Anarchists, the Communists and the International Labor Defense are becoming bolder in spreading their dangerous teachings among the ignorant negroes of the South, and more urgent every day becomes the question—what are we going to do about it? The same thing is true of every State in the United States of America.

How is society to rid itself of such dangerous characters, white and black?

THAT IS THE QUESTION. We must find the answer or perish.

None of us can shirk responsibility. If, seeing things go wrong I do not speak out, I am a moral coward, or I am lacking in love of race and country. DUTY DEMANDS that you and I do our part by word or deed in the sublime work of bettering the world in which we live.

I once read a sermon: "PAY THOU VOWS TO THE MOST HIGH", was the text. It was a "bugle-call to duty," an appeal to men for "the sagacity of obligations"; a plea "for the redemption of those pledges which we make when we are lifted out of the dull routine of life by some great desire, some great inspiration, some great PERIL."

Addressing himself to the old soldiers of the Confederacy, the preacher said:

"You remember that battle field in Virginia; you remember the serried blue ranks that you were about to charge; you remember the awful stillness that came over you as you thought of the loved ones at home whom you might never see again. And you remember what you promised God you would do if you came out of the battle alive. You remember just how you felt when the word came ringing down the line, 'Forward March.'"

"PAY THOU VOWS TO THE MOST HIGH."

The essence of the sermon was, "Live up to your Duty and your Obligations."

DO WHAT YOU PROMISED TO DO.

I read another sermon on Duty, of the "higher path and the old land marks; of the honor that a man should guard as a woman guards her virtue."

He told of "the little ermine of the far North, the tiny creature of the snows, the unsullied Diana of the silent woods, that was so true to its instinct for purity, so loyal to the white drapery that God put around it that the hunters, seeking its life for its priceless fur, put filth around the burrow where the dainty thing lived; and how this little dumb brute, shrinking from a vile contact which would spoil its spotless covering, fell into the hands of its enemies, preferring death to contamination."

"Are the old lessons lifeless? Are the old glories gone? Are there no feet that tread the old paths?"

"Glorious and indestructible was the foundation of that civilization builded on the chastity which rose into 'the triumph of death' rather than sink into the degradation of personal impurity."

I hold no malice in my heart against the negro. There is not a negro who knows me that would hesitate to come to me for protection, and be certain of getting it. I have defended him in the Courts as a lawyer when his life, liberty and property was at stake. In his contracts, in his property, in his home and church, in his absolute rights as a human being. I would hate myself if I denied him the same treatment that is given to the whites. It is only when he claims to be our equal, wants to thrust himself into our social life, wants to claim equality in political privileges, wants to mingle the blood of his race with the blood of ours, wants to lower the standard of our civilization by mongrelizing the superior race, it is then that I take issue with him and those who are in agreement with him.

The negro has no place on the JURIES OF A WHITE MAN'S COUNTRY. ABRAHAM LINCOLN WAS OF THAT OPINION. In his speech at Charlestown, Illinois, on September 18th, 1858, on the JURY question and other questions with reference to the negro, Mr. Lincoln said:

"I will say that I am not, and never have been, in favor of bringing about in ANY WAY the SOCIAL AND POLITICAL equality of the white and black races—that I am not, nor ever have been, in favor of making VOTERS or JURORS of negroes, nor of qualifying them to HOLD OFFICE nor to inter-marry with the white people; and I will say in addition to this that there is a physical difference between the white and black races, which I believe will forever forbid the two races living together on terms of SOCIAL and POLITICAL equality. And inas-

much as they cannot so live, while they remain together there must be the position of SUPERIOR and INFERIOR, and I, as much as any other man, am in favor of having the SUPERIOR POSITION assigned to the white race." (Vol. 1, page 369, Complete Works).

Mr. Lincoln foresaw what the result of political equality would be. North Carolina furnishes a very good example and I quote an extract from the speech of Honorable John B. Knox in the Constitutional Convention of Alabama in 1901, as follows:

> "Mr. President, if our insight will not enable us to see this danger, we have an object lesson in our sister State of North Carolina. They, too, thought that after overthrowing the carpet-bag government and establishing white supremacy they were safe; and they were able to maintain good government for something like twenty years. But when the white men divided a large mass of ignorant and vicious voters found there opportunity, and the people of that State were subjected to such humiliation as I sincerely trust our people may be forever spared!
>
> Time will not allow me to dwell upon the conditions which prevailed in that State, but I will quote a paragraph from the testimony of Hon. John D. Bellamy, member of Congress from that State, given in the contest election case of Dockery vs. Bellamy, which will give you some idea of the conditions which prevailed in Wilmington, the principal city in the State, where the negro was in full political control. He says:
>
> 'And the result of it was that a horrible state of misgovernment had been brought about; that night after night burglaries and robberies took place in town, without any detection; that within about eight hundred feet of the City Hall six burglaries had been committed in ten days without

detection; that one burglar had been arrested in a lady's residence, a negro burglar, was captured and held by the ladies until a police officer arrived, and that, although the offense was punishable by death, and not bailable, he was taken to the City Hall and there let off on his own recognition, or a straw bond, I have forgotten now which, and the negro escaped.'

Again he says: 'I recollect especially an incident of my own experience, where I prosecuted for Mr. Hamme, a very gallant and reputable citizen, a hat merchant of this city, who was assaulted in his store in broad daylight by Richard Holmes, a negro policeman and struck between the eyes with a pair of brass knuckles, and felled senseless to the floor; and that on three trials, although the defendant himself (Holmes) did not take the stand, and the evidence was uncontradicted, the jury failed to agree a single one of the three times, standing the first time nine whites for conviction and three negroes for acquittal; the second trial taking place at the next term of court all the white men on the jury stood for conviction and the negroes on the jury for acquittal; on the third trial, which took place at a subsequent term, it likewise stood eight or nine—I have forgotten the number—whites for conviction and three or four negroes for acquittal, according to the number of negroes on the jury; and finally the Fusion Solicitor, although I myself was associated in the prosecution, nol prossed the case without even consulting me.'

I will pause, too, to cite to you the editorial written by a negro editor of a negro newspaper published about this time in Wilmington, which he was emboldened to write because of his reliance on the protections he supposed the existing government would furnish—the publication of which resulted in a riot, causing the loss of many citizens:

'Poor white men are careless in the matter of protecting their women, especially on farms. They are careless of their conduct toward them, and our experience among poor white people in the country teaches us that the women of that race are not any more particular in the matter of clandestine meetings with colored men than are the white men with colored women. Meetings of this kind go on for some time, until the woman's infatuation or the man's boldness brings attention to them, and the man is lynched for rape. Every negro lynched is call a "big, burley, black brute", when in fact many of those who have been thus dealt with had white men for their fathers, and were not only not "black" and "burley", but were sufficiently attractive for white girls of culture and refinement to fall in love with them, as is well known to all.'

The publication of this letter in connection with other acts of aggression on the part of the negroes led to the Wilmington riot, which resulted in the loss of many lives.

The conditions which prevailed in the city of Wilmington were such that eight thousand of her best citizens were forced, for more than ten days, to suspend business and patrol the streets with Winchesters!

Mr. President, the negroes of Alabama greatly exceed in numbers those in North Carolina, and he who would believe that there is no danger to us in leaving the ignorant and vicious element of the race in this State possessed of political power, would be of a very innocent and confiding nature indeed.

The great work of this convention should be to establish the supremacy of virtue and intelligence in this State—to imbed it deep in the Constitution, so that future generations, when they come to view the

work that you have wrought, will revere and bless the memory of those who framed it. Thomas Jefferson, the great commoner, who was twice President of the United States, and honored as it falls to the lot of few men to be, when he came to die, turned his back on all his pomp and glory and counted as the greatest achievement of his life what he had done to benefit his fellow men! "Let it be written," he said, "upon my tomb, 'Here lies Thomas Jefferson, author of the Statute of Religious Liberty in Virginia, Founder of the University of Virginia, and the author of the Declaration of Independence.'"

To my mind, the most dangerous doctrine that can be preached to the people of America is that Social Equality, mixed marriages, mixed schools, and political equality offer the solution of the Negro Question. The facts in the case force upon me the conclusion that the true way out of our troubles is to give to the negro, fully and universally, those absolute rights which the law of nature is said to give to every human being. But POLITICAL PRIVILEGES, voting, office-holding and ACTING AS JURORS he should not have at all. To exclude him utterly from affairs of government, would mean peace, to him and to us. As to social equality, that would inevitably breach the walls of racial purity. Mixed marriage would become more common, the hybridizing of the race would set in, and nothing, then, could prevent the downward movement of the great Caucasian race.

Unfortunately, four millions of people, who had recently been "gibbering savages" were given their freedom so suddenly that they did not know what to do with it. This being the case, the vindicative rage of such men as Thad Stevens and Charles Sumner brought forth the Reconstruction laws and the Fourteenth and Fifteenth Amendments. These acts of legislation were ambitious efforts to do something which the Almighty alone could have done—to make a mass of ignorant negroes the equal of a mass of civilized Caucasians. The effort was a crime the experiment a calamity.

It took England five hundred years to abolish white slavery in her government. The Great Creator of the Universe, when He determined to take the Jews out of Egyptian bondage, with a high hand and outstretched arm, kept them out of Palestine for forty years, until all but two of the old slaves were dead, knowing they would not fit for freedom or citizenship. It required a thousand years of education to fit the Saxon and the quick-witted Celt for the duty and responsibility of American Sovereignity. Ten thousand years of civilization and education could no more qualify the negro for self-government that it could raise to the intellectual level of a jackass the members of the International Labor Defense Association, Socialist, Communists, Social-Equality Advocates and the others.

The incapacity of the race to step at once from a position of servitude to one of power was evidenced by the infamous acts of the reconstruction period. Southern chivalry bowed its head in enforced submission to the rule of the negro in conjunction with the carpet-bagger. God pity the Southern white man of those days. Every indignity and every abuse was heaped upon him. The infamy of that period is a blot upon the pages of our history that time can never efface. The descendants of men who framed the Constitution, who directed its course for nearly a hundred years, who adorned the pages of American history with their achievements, were denied the ballot or a part in the direction of the government. In the halls that had echoed to the eloquence of great Southern statesmen sat the ignorant African, controlled by the scum of the North. No bill was too fraudulent for their votes, no crime too dastardly for their avarice. The fairest section of our country was threatened with a condition having few parallels in history. The NATION and the WORLD, owes a debt of gratitude to the men of the South, who, in the face of Federal bayonets, in the face of all the power and prejudice of the general government, wrested the Southern states from the control of ignorance and vice, rose above the barbarian, showing again to the world that brute force is not superior to

mind. For a time, though, might triumph over
and fraud vanquished justice, "until the cry
trembled on the lips of the stricken South, 'Oh Lor
God, hast Thou forgotten Thy people?"

History has put its stamp of disapproval up
acts of reconstruction. No such blunder will be
again. The very party and men who thrust this
the South have lived to see the error, and we will
come to the realization of the paternal prophes
promise of Him who was appointed to repleni
cleansed and quickened earth, that "God shall e
Japhet and he shall dwell in the tent of Shem
Canaan shall be his servant."

We are now confronted with another dangerou
The International Labor Defense, Socialist, Anar
Communists and other associations of a like n
whose dangerous propaganda among our negroes
result in any good and we propose to keep them o
of our borders.

White supremacy should be established by law.

I take the position that the Fourteenth and Fif
Amendment of the Constitution should be repealed
Fourteenth Amendment is a flagrant violation of n
law, of the law that the greater and less cannot be
that matter must be subject unto mind, that wisdo
born to rule and ignorance to obey. To deny th
greater shall govern the less intellect is to ab
man's right to rule the beast and God's authority
Adam's sons. Is there anything strange about the
osition that men whose ancestors wrung Magna C
from King John and recognition of independence
King George, should decline to be put on the same
cal and social plane with the lowest race of which h
has made any record?

THE INTERMARRIAGE OF THE RACES SH
BE PROHIBITED BY LAW.

In Alabama, we have the following law, towit: "I
white person and any negro, or the descendant o

negro intermarry, or live in adultery or fornication, with each other, each of them must, on conviction, be imprisoned in the penitentiary for not less than two nor more than seven years."

I submit that the same law should be on the Statute Books of every State in the United States of America.

If not,—WHAT IS THE OBJECTION?

WHITE CHILDREN SHOULD NOT BE PERMITTED TO ATTEND THE SAME SCHOOLS AS NEGRO CHILDREN. Do you think they should?

In Alabama we have a Constitutional provision as follows:

"* * * Separate schools shall be provided for white and colored children, and no child of either race shall be permitted to attend a school of the other race."

ALL EQUALITY OF SOCIAL RELATIONS WITH THE NEGROES SHOULD CEASE, which would be only the carrying out of the instinct of racial self-preservation. IT IS GOD GIVEN, and its purpose is the high and holy one of keeping PURE the blood of the SUPERIOR RACE. To do this is best for the white race, best for the negro, best for our country, best for MANKIND.

"Unhappy White, when life was in its Spring.
And thy young hope just waved its joyous wing,
'Twas thine own hand that struck the final blow
And helped to plant the wound that laid thee low.
So the struck eagle stretched upon the plain,
No more through rolling clouds to soar again,
Viewed his own pinion on the fatal dart,
And winged the shaft that quivered in his heart,
Keen were his pangs, but keener far to feel
He nursed the pinion which impelled the steel,
While the same plumage that had warmed his nest
Drank the last drop of his bleeding breast."

CAUCASIAN CIVILIZATION.

When some newspaper, magazine and people who have not studied the question, take the position that the negro should be made the SOCIAL and POLITICAL equal of the white man, they are threatening CAUCASIAN CIVILIZATON; they are in agreement with Socialist, Anarchist, Communists, The International Labor Defense and the others who offer the negro absolute equality with the whites, SOCIAL AND POLITICAL.

The doctrine that they are trying to teach would mongrelize the higher race. Racially, we people of the South are yet pure, and we shall so remain. GOD IN HIS WISDOM has given to the Caucasian race, a superiority of the brown peoples, the yellow and the black. The superior race should use this superiority for the BETTERMENT OF THE WORLD and not SINK IT into a debasing, UNNATURAL equality which some ignorant, unthinking people are seeking to do. ANYBODY who knows ANYTHING about the history of nations, knows that a superior breed crossed with an inferior, sinks to a lower level.

Is it not true that the mongrel is the trouble with Cuba today? Is it not true that in Cuba, there is almost no pure blood at all—and who to-day will say that it is capable of self-government? Any of the Caucasians, the Teutons, Celts, Normans, Saxons or Angels can fuse and nobody will be hurt but when the higher races fuse with the lower, ruin is certain to follow. MOST ANY SCHOOL BOY knows that to be true, but the ignorant advocates of social equality, between the whites and the blacks, DO NOT KNOW IT, or they have completely lost sight of race preservation.

There is no "prejudice against the negro" in the South but we refuse to class as one of our brothers the black African whose skin nature painted black. History proves, BEYOND THE PERADVENTURE OF A DOUBT that

the negro is of an inferior race, but the able scholars who constantly taunt the South about "prejudice against the negro" seem to be ignorant of an academic fact, or else, the FACT of his inferiority is lost sight of entirely. Don't they know about the thick skull God gave him? Do they refuse to see the TRUTH OF HISTORY? Don't they know that the negro HAD AS MUCH TIME AND AS GOOD "OPPORTUNITY" to evolve a civilization from within as ANY OTHER RACE HAD? What civilization has he evolved? Answer that question.

Africa has always been the home of this lowest type of humanity—the negro. No remains of antiquity yet discovered exhibits them as being master of any other territory. When wall paintings, sculptured groups, or tablet inscriptions prove their presence in any other land, then negroes appear as captives, or slaves, as envoys or messengers. Records which admit of no doubt and which reach back into the very dawn of history, picture this lowest human being, giving him the very same features that distinguish him today. In Rome he remained a negro; in Egypt a negro; in Hundustan, a negro; in Turkey, a negro; in South America, a negro; in England, a negro, and he IS STILL A NEGRO in these United States of America, and yet there are those, supposedly intelligent, white people, who are endeavoring to elevate him to the standard of the white man.

It is RIDICULOUS to talk about the American negro as "the poor, downtrodden race" and the "duties which we owe him." The truth is that his position as a slave was better than anything he had ever known at home. He was generally well fed, well clothed, well housed, well treated. In exceptional instances he might have had a master who was as cruel as the chieftain of his tribe, but that did not happen often. Occasionally, he may have had as rough a time as he was accustomed to at home, but this was seldom the case.

God Almighty made the skin of the negro black, climate did not do it, as is contended by some people, who

have not studied the question. (Darwin in his writings is inclined to think that West Africa was the original home of the human race, because no doubt, that it was there that the apes came so near being like the men. Apparently, he believed that somewhere in those vast jungles might be found a species of the monkey tribe which would form the connecting link between the gorilla and the lowest type of negro.)

Climate has nothing to do with the negro or his characteristics. The Dutch have dwelt in Africa for hundreds of years, and they are white men now as they were when they first went to the tropics. The Chinaman lives under a sun as hot as that of Africa, and he goes almost naked, as the negro does in Africa; and yet the Chinaman is no more like the wooly haired negro than he was thousands of years ago. That food, rainment and climate do not alter racial characteristics, is proven by the remarkable resemblance of the Eskimo to the natives of China. The former inhabit the frigid zone, live on fish and flesh, without vegetables, and wear the warmest furs obtainable; the latter are vegetarians of the torrid zone, who wear almost nothing but their own skins. There are many more examples, but this should suffice to convince all who are open to conviction. Look at the Abyssinians, they are neighbors to the people of Guinea, but the two types have remained distinct for ages. The Egyptians, the Canaanites, the Phoenicians, were also neighbors to the negro, but the racial types remained radically different, from century to century. What then is the only conclusion? It is simply this: The negro has always been what he is and he will always be what he is, no matter how many books you may rub into his head, and no matter how much door of hope recognition may be given to him.

NATURE created him INFERIOR of the WHITE MAN: and if ever the white man lowers his level to that of the negro—in the vain hope of lifting the negro up—THE CRIME AGAINST CIVILIZATION WILL BE

PUNISHED BY THE MONGRELIZATION AND DEGENERATION OF BOTH RACES.

The salvation and continued advancement of the United States of America PIVOTS ON THIS VERY SUBJECT. The negro is not a menace to our future BECAUSE HE IS A NEGRO, but BECAUSE A CERTAIN NUMBER OF MISINFORMED AND MISGUIDED WHITE PEOPLE act upon the idea that the negro is a white man painted black by the cruel caprice of God.

It has even been said that the low characteristics of the negro are the result of slavery. They should know that the assertion has no foundation in fact and is false. Long before any of us were born the colonizations society took the very best of the race and settled them in Liberia, Africa. They gave them the land, they furnished them with implements of labor and with plenty of food. All the Christian governments banded themselves together to protect them in their liberty. They had their own government. Every office from President to Constable was filled by negroes. More than a century has passed, and what have they done? What statesman, historian, poet or inventor have they furnished to the world as a proof of their advancement? NOT ONE. If so, NAME HIM. Their fathers went there, trained laborers, their children are ignorant, idle, vagabonds. Their advancement which they make here is owing to their association with their superiors. Isolated to themselves they would soon go back to barbarism. But says the northern philanthropist these victims of your oppression must be educated. WELL, LET THEM EDUCATE THEM. IT WOULD BE NOTHING BUT RIGHT IF THEY DEVOTED EVERY DOLLAR, FOR WHICH THEIR FOREFATHERS SOLD THEM, TO THE BENEFIT OF THEIR EDUCATION. Don't tell us that they are "victims of oppression", but compare the Southern negro with his progenitors in Africa, even of the royal blood, and he is as much superior as a two hundred and fifty dollar Kentucky mule is to a Mexican Jackass.

"The King of Unongo ruled a small but very powerful and very populous country, and was the terror of all his neighbors to the north and west by reason of the number and ferocity of the slave raids that started from his dominions, and were almost invariably successful. The whole religion of these people necessitated attacks upon their neighbors, for its basis was constant human sacrifice, and the simple law of self preservation taught the Unongos, for their own safety, always to keep at hand a goodly supply of the necessary victims. The true history of the place would be a dismal record of ruthless and brutal doings to death of human beings, often apparently for no reason whatever except to satisfy a ghoulish craving for the sight of human blood flowing flesh, or blackening, clotted in nastin in the open, in the town, in street, in square, in courtyard, nay, upon the very household utensils themselves.

"On this, the third day, were to be erected with all the proper ceremonies, the six main uprights of the new Juju house. The reason, or even the simple mythology of these acts, it is hopeless to except; one might as well hope to learn the mythology of monkeys; though, verily, I believe, the daily annals of a collection of the higher quadrumana would be more sane and cleanly and far less blood thirsty than those of the lower bimana.

"But now it was time for things to begin and as etiquette dangerous to evade, constrained all to take part in the ceremonies, fasting, so far as a solid meal was concerned, all real eating and drinking had to be deferred until the proceedings of the date were concluded."

There appeared to be no regular commencement, but, seemingly by a kind of general impulse, drums began to be beaten, horns blown, and trade muskets discharged in the air. Then cows' horns, filled with powder and tamped with clay, were fired off with a thundering report and considerable danger to the neighbors and with the exception of the kind, who practically never appeared in

public, and of his immediate attendants, the whole population of the town flocked to the spot where the ghastly preparations were already well advanced."

"The priest and the warriors and women gathered in a great circle around the pits; the slaves who had carried the victims to the town, bound hand and foot to poles and rolled in cheap calico, at a sign came forward and laid them two and two beside each excavation, one man and one woman to each. Cutting the lashings that secured them to the poles, they took these away. Then one of the priests began a sort of exhortation to the people telling them that the king had graciously given orders for the erection of a new Juju House, which would be for the general benefit; then after animadverting upon the crucifixions of young women that had taken place two days previously for the prevention of famine and drought, he referred to the head cutting of the day before, and declared that the auguries drawn from the positions in which the heads had fallen had been most favorable, that the post of the Juju House were about to be set up in accordance with them, that the heads would be fixed upon the buildings and would bring great luck, and, to prevent and minimize occurrences of such evil omen for the coming of those women who had borne twins in his Majesty's dominions during the year gone by would now be buried alive in the hole in the center of the house, over which, when a proper dwelling place had been provided, a most powerful Juju would preside. He ended by saying that the king had given orders for a great feast to conclude the three days proceedings and that his royal bounty had provided for his people a more than usually liberal dole of rum and palm wine.

"He finished amid the frantic applause of the crowd and more discharging of muskets and banging of drums.

"Now the warriors got into some sort of order in front and began to chant a monotonous song or hymn, to which the women marked a rude time by grunting at regular intervals and slapping their arms, breasts and thighs."

While this hideous anthem was being sung, the executioner and his assistants seized the victims two and two as they lay, male and female, and binding them face to face, pitched each couple into the long holes lying ready excavated beside them. This done he and his daubed and painted assistants, in all their disgusting paraphernalia of charms and bones, began to dance about the pits, rattling hollow calabashes full of small nuts and seeds, partially drowning the groans and screams of agony that preceded from the wretched beings below.

"But now arose the cry of 'Rice-pounders' 'Women, O women, bring your rice-pounders. Let the family be fruitful and the year give many slaves. Women O women, bring your rice-pounders.'"

"These words were shouted and yelled by the warriors, but promptly taken up by the whole crowd, which, wild with excitement, began to stamp and dance with gyratory motion about the spot occupied by the executioner and his assistants.

"Several scores of women had rushed off to the town at the first words, and were now streaming back, each one armed with her rice-pounder, or hard, heavy wood, about three inches in diameter, shod with iron at the lower end. As they came up they were speedily arranged in rows around the pits, and at a given cry from the warriors and the cry of 'Now O women pound the sacred rice to feed the gods' they commenced pounding away with their formidable rammers at the wretched creatures below.

"The piercing shrieks that immediately rent the air soon ceased, and soon, save for a low groan or two, no sound arose from the blood stained mortars except the monotonous beat, beat of the horrid pestles.

"But while the women pounded, the people and executioners yelled and danced till the excitement attained a frantic pitch. Then suddenly closing in, the crowd

seized the great pillars lying on the ground, hoisted them up by main force of arm, and, planting each one in the center of the gory mass below, filled in the loose earth and stone about them.

"Not till the earth was packed hard around the pillars and level with the surface of the surrounding soil did the women cease their ghastly labour. Then they stopped, exhausted, and rolled about, many of them apparently afflicted with a species of epileptic frenzy. (Just such a frenzy as we see the colored women exhibit at their religious camp-meetings and church services in the United States at the present day.)

"At once each became the centre of an admiring circle, for their frenzy was a good omen, a sign that the sacrifice had been accepted with pleasure by the gods, whose spokeswomen they had now become, for the one being, at least.

"After awhile things quieted down; the crowd once more became attentive, for the final ceremony was at hand. As already mentioned, another pit had been excavated in the centre of the pillars, now so firmly erected. Along side the centre hole a dozen more miserable women were dragged. These were the unfortunates who had given birth to twins during the previous year in the king's dominions, and so brought evil upon it. One of the priests gave the people his views upon the subject, views that will hardly bear reproduction in these pages, and then the executioner, carrying an iron bar about two feet long, and followed by his assistants, rolling a short thick log, threw the women down one after another, and deliberately smashing their arms and legs in two places, doubled them up behind them and flung the poor creatures into the hole.

"Not a sound broke the silence, save the screams of the unfortunate victims of this horrible cruelty, and as soon as the last of them had been pitched, shrieking, into

the pit, the earth was filled in over them while they were still alive, and with a wild shout the whole body of spectators rushed in and commenced to stamp it flat with their feet. In a very short time all trace of the excavation had disappeared, and the whole space, inclosed by the uprights, and even several feet beyond them, was trampled smooth and flat and as hard as a threshing floor.

"No one passing could have guessed at the terrible crimes which had been committed, for hardly a splash of blood upon the pillars gave evidence of them.

"With firing of muskets, blowing of horns, and general congratulations and jollity, with praises, yelled and chanted of the goodness of their king and his liberality, the crowd returned to the town, the women to prepare the evening meal and make such festive arrangements as were demanded by the king's orders, the men to talk over the day's celebrations, plan future schemes of blood and rapine, and discuss the next slave-catching expedition all separating later on to secure betimes the royal dole of drink.

"I have described the last day, the night I will leave to the reader's imagination and to its fitting veil of darkness." (J. Cameron Grant's "Ethiopia," 19th Century explorations.) (The reader is also referred to "A Study of Primitive Marriage" by Ernest Crowley, M. A.)

These were the "INNOCENT, CHILD-LIKE PEOPLE" that we are charged with "TEARING FROM THE JUNGLES OF AFRICA" and "REDUCING TO A CONDITION OF SLAVERY".

In Africa the negroes had never been free. They held life and property at the pleasure of cruel, jealous, capricious kings. The shadow of death hung over them, all the time. No member of the tribe knew what moment some look, word or act of his might enrage his chief and cost his life.

IT IS THE BLOOD OF THE DESCENDANTS OF THESE PEOPLE THAT YOU ARE NOW TRYING TO FUSE WITH THE BLOOD OF THE WHITE MAN.

The very earliest records show that our civilization was a very high one, as distinguished from that of the negro, the negro never had any. Our ancestors held a tradition of their Aryan origin and of their emigration from the remote East; they had a democratic system of government; they had a system of laws; they had a system of agriculture; they were navigators of the seas; they were builders of houses; they mined and made use of metals; they had a written language and some literature; they were manufacturers on a small scale; they had a sense of modesty and personal beauty, for they wore shoes and garments of wool and linen, as well as armlets, rings and other ornaments.

The man's house was already his castle and his home a sanctuary.

But the FLOWER OF OUR PRIMITIVE CIVILIZATION was not the valor of the men, nor the stern jealousy with which they guarded the honor of their homes. It was the virtue of the women and the LOVE AND RESPECT that the MEN had FOR THEIR WOMEN and the jealousy with which they loved and GUARDED THEM ALWAYS.

"Whatever may have been said by lecturers or novelists to the contrary, the old-time darkey was the happiest being on the Lord's green earth. He took no thought of the morrow, what he should eat or what he should drink, and not a wave of trouble waved across his lazy heart. He was as prone to idleness as the sparks are to fly upward, and when his master caught him napping in the field, he turned ashy and protested that he was the sickest negro in the world."

"One day an old-time planter, who was a lawyer as well, came home from court and found his darkies lounging about and sleeping under the shade of the trees, and he sternly called them around him, with a thunder-storm on his brow, and harshly said: 'If you lazy, good-for-nothing niggers don't quit lounging and sleeping around here and get up and go to work, I will quit practising law and let you all starve to death.'"

"A lazy old darkey got married one night and gave the preacher a string of fish for tying the knot. In about two months the preacher met him and said: 'Rastus, how are you and Aunt Dinah getting along?' 'Well, boss', Uncle Rastus said, 'I wish to de Lawd I had et dem fish.'"

"Uncle Rastus met Uncle Nicodemus one day and said: 'Nicodemus, do you' 'spose any of the 'postles wuz culled?' 'I'se not sho' 'bout dat, Rastus,' said Nicodemus, 'but I'se powerful so dat Simon Peter wuz no nigger, 'cause ef he had been, dat rooster neber would a-crowed three times.'"

"Old Uncle Ephraham's wife died, and the old man monned, and yelled, and shouted, and finally jumped in the grave and wanted to be buried with her, but a big stout darkey jerked him out and held him. The old man looked around in his wrath and said: 'Turn me loose nigger, and go 'way fum here; yo' neber did lak to see me enjoy myse'f.'"

"Uncle Rastus was a preacher, and his master was also a preacher. He couldn't read a word in the book, and was therefore compelled to rely on his master for his texts.

"He shuffled into the mansion one Saturday evening and said:

"Excuse me, marse, but what is you' text gwyne be for tomorrow, ef yo' please sir?"

"'It is this, Rastus,' the old man said: "'And the multitudes came unto Him and He healed them of divers diseases.'"

Uncle Rastus thanked his master and bowed himself out, and next morning he rose before his congregation and said:

"My congregashun, I'se got de dangerousest text 'twixt de lids of de Bible. It is dis: 'And de multitudes came unto Him and He healed dem of divers diseases.' Mark de words of de text: 'divers diseases.' Now, according to dish heah text, diseases is in de world—de yellow fever kills hits thousands, and the small pox kills hits tens of thousands. Sometimes dese earthly doctors can cuore de yaller fever ef dey gits to it in time. Sometimes dey can cuore de smallpox, but, in the language of de text, ef yo take de divers, yo's done dead right now. Nobody but de Lord can cuore de divers."

"Every sunrise of summer was greeted by the laughter and songs of the old time darkie of the South as they would scatter in gangs and go forth in every direction to begin the labors of the day, and the music floated back to the mansion to sweeten the morning dreams of the drowsy lords and ladies who still rested on their pillows. The negroes of that day were the most musical and the most humorous race of people who ever lived in the world, and they wove a melody into every task they performed; every leisure hour was filled with their mirth and their merriment, and they were imbued with the spirit of the Christian religion, and were firm believers in the providence of Almighty God. There was not an infidel among those millions of slaves."

It seems strange that our brothers of the north do not know more about the institution of slavery and the negro, than they do.

We have been charged with inventing slavery and alone been guilty of it and for this imaginary reason

much propaganda has been spread among the ignorant of this generation. Go and read your Bible. Don't you know that slavery is coincident with the earliest annals of the human race? Don't you know that Holy Writ expressly sanctions and regulates the system, that Christ never uttered a word against, it, and that St. Paul commanded slaves to obey their masters? Don't you know that the system had existed in all ages and among all nations and that it was thrust among the American Colonies by the Old World? Don't you know that the Spaniards brought slavery to this country, long before the Jamestown settlement was made? Don't you know that New England it was that enjoyed the lucrative monopoly of tearing "an innocent, child like people from the Jungles of Africa?" Don't you know that from Marblehead, Massachusetts, sailed the first slave ship that ever cleared from an American port? Rhode Island kept more than a hundred such vessels busy and from New York the famous slave ship "Wanderer" put to sea and a Southern lawyer libeled the ship and put a stop to the piratical traffic. It was a Southern statesman who kept slavery out of the great Northwest and when the Committee, in the Convention of 1787, reported in favor or closing the slave trade in 1800, New England voted down the proposition and made the date 1808. Virginia voted to put an end to slavery in 1800; Massachusetts voted to prolong it to 1808. So did New Hampshire and Connecticut. These gentlemen made good of the interval between 1787 and 1808 by selling to the South and the West Indies, a million blacks, whom they "tore" from the jungles, and "chained," scourged and threw into the hold of their vessels.

Teach your children the facts and cease maligning the South.

New England practiced Indian Slavery, negro slavery and white slavery, from the very beginning, and she never gave it up until she found a cheaper, better way of exploiting human labor.

I am not the least bit ashamed of the fact that the South owned slaves: if we had treated them with the brutality that northern corporations inflict upon white slaves under the wage system, I would be ashamed. "Five dollars a week and a gentleman friend," was something unknown to our philosophy.

You must learn about the real negro, in the mass, and remember that the brain cavity of negro skulls found in mumies thousands of years old, is "the same inferior product of nature" as it is now. Once an Indian, always an Indian, once a Chinaman, always a Chinaman, once a white man always a white man and once a negro always a negro. God Almighty so ordained it and those stupid people who advocate mongrelization can not reverse God's Ordinance. Education cannot do it. How can education alter the characteristics of a race? Answer that question? How can you by education make a white man out of a negro or a Chinaman? Are you so ignorant that you think sending him to a college will bring about the change? Is it not a fact that racial characteristics are inherited but that culture dies with the individual, so that you can educate a negro and when he dies any culture that he may have acquired through education dies when he dies, but his RACIAL characteristics are transmitted to his children. Is that statement not true?

We people of the South know the negro, and the negro knows that the southern white man is the best friend he has. We like him in his place, and there HE MUST STAY. Fools to the contrary notwithstanding. We people of the South are determined to safeguard our race—REMEMBER THAT. If there ever was a time when the WHITE PEOPLE OF AMERICA should follow the example of the South, it is NOW.

It was a mistake to bestow suffrage upon a race unprepared to intelligently exercise it. The ballot and the office were not and are not now essential to the negro's

happiness and prosperity. All political privileges should have been and should now be withheld. This should be a white man's government,—to the exclusion of brown men, red men and black men. Open the door of hope to him, but teach him that this does not mean a vote to sell or some political office that puts him above white people or a place in politics that is degrading to the white man.

Who will deny that social equality will follow where political equality leads? Social intercourse between blacks and white must ever be prevented so that the door to amalgamation will be forever closed.

We cannot have political equality, without having social equality. We cannot have social equality, without having intermixture of the two races. DOES ANY TRUE CAUCASIAN WANT THAT?

The South stands for the dominance, and the racial purity of the white race, it has ever so stood and will always so stand. Our civilization is the product of centuries of evolution, centuries of toil, centuries of bloody struggle. It can be preserved and perpetuated by those, only, whose ancestors achieved it. The negro does not understand it, does not appreciate it, and does not know how to maintain it. The more he is mixed up with it, the greater the danger that it will degenerate. What has the negro ever done, said or written? Has any radiant thought ever been born in his wooly head? What does he know about Systems of legislation? No idea of a Paradise was ever conceived by him. His whole philosophy has been bestial and IS NOW. All that he has ever been, is now or ever will be is a weak imitator of the white man. If left alone the worship of God would soon give way to heathenism, inhuman rites and sacrifices, the church bell would give way to the voodoo drum and we would have another Liberia or a San Domingo on our hands. And yet there are some stupid people who call themselves WHITE MEN who preach and practice social equality.

We of the South give to the negro, to the fullest extent, the absolute rights of a man-life, liberty, the acquisition and enjoyment of property, free speech, free press and freedom of conscience. That is ALL THAT HE IS ENTITLED TO.

The electoral franchise and the right to hold office are not a part of the law of nature. The franchise is a political privilege, which organized society gives, or withholds, at its discretion. It is not bestowed upon young white men, however competent, until an arbitrary age-limit is reached. It is not allowed to the citizens of our National Capitol. For a long time, it was withheld from our mothers, sisters, wives and daughters. It is not allowed to the soldiers of the United States Army. And yet, we extend the most ignorant, venal and criminal negro the electoral franchise. *Is it right?*

The South has squandered hundreds of thousands of dollars since the Civil War educating the blacks, but in most instances the schooling does the children no good. The average negro has no true conception of religion, of civic responsibility, of loyalty to the marriage vow, of principle of any kind.

"A negro girl was called to the telephone and her end of the conversation was overheard, as follows:

"Yes, dis is Miss Jones speakin."

"What, will I marry you?"

"Yes; what am de name of the gentleman speaking?"

A negro girl went to her mistress and told her that she was going to leave her and get married.

"Well," said the mistress, "I'm sorry to lose you; but you have been a good servant. I owe you a month's wages, and here's another month's pay as a wedding present."

"Lady," said the girl, "dere's a favor ah'd like to ask you. Would you min' taking care of dis here money for me fo' a while?"

"No, I don't mind," said the lady, "but if youre going to get married, won't you need all your money?"

"No mam," said the girl, "Does you think ah'd trust myself wid all dat money wid a strange nigger?"

The negro is a mere child of impulse. Anybody can lead him anywhere by playing upon his credulity, his ignorance, his superstition, his sensual appetites. The mass of the race are in a lower condition to-day—in health, in morals, in physical well being, in racial purity and strength—than they were in the days of slavery.

You cannot judge the NEGRO RACE by a FEW negroes like Booker Washington, DuBois, Moton and a FEW others. Even though a Zulu type of the pure blooded negro should give proof of exceptional capacity,—what does that prove for the whole negro race? The Zulu type is rare; the low Gunea type ABOUNDS. The moral and mental gulf that separates Booker Washington and a few others is about as deep and wide as the Atlantic Ocean. The negroes with a suggestion of intellect are usually negroes only in name—mongrels in whose veins flow the blood of SOME DEPRAVED CAUCASIAN. The pure blood blacks who have exhibited intellectual and moral qualities, to any great extent, superior to those of the monkey, are few and far between. And yet the pure-blood Ethip is generally a much better and safer member of society than the "yaller nigger," who appears to inherit the vices of both races and the virtues of neither.

I am in favor of education, but I'm not in favor, or ever will be, of taxing the white man to educate negro children. You can go on with your foolery, Mr. Politician and Mr. Philanthropist, insisting upon a high grade

of education for the negro, whether he is fit for it or not. Give him a contempt for all manual labor. Then close every office of profit to him. Deny him your clerkships; shut the doors of your professions to him and you have confronted yourself with a SERIOUS situation. Or, open them all up to him, with his contempt for labor and his ideas of social equality and you have confronted yourself with another serious situation. However, we people of the South are perfectly willing for our brethren who do not agree with us to take care of the so called Afro-American, and we of the South will be glad to have those who only have sense enough to fear God and obey the laws of the land.

By the sacred memories of the mighty past, in the name of every hero martyr that fought and died to create this Christian civilization, as trustees of the glorious legacy of Caucasian ideals and achievements, as defenders of the inheritance of our children's children, we people of the South will safeguard our race and our institutions from the infusion of negro blood and the degrading effects of negro standards.

If the white people of the North, East and West will study the question and learn the facts they will free themselves from this IMPENDING DANGER.

Let anybody come South and investigate. Let them investigate the question of venereal diseases. The negro women are simply rotten with syphilis and from them it reaches forth its leprous hand to drag down men, women and children of their own race. The physical condition of the younger negroes is deteriorating; the increase of crime and vagrancy among them has for a long number of years been on the increase AND AMONG THOSE WHO HAVE BEEN EDUCATED. Come South and study the question and you will find a chapter of horrors—for our present and our future.

Speaking for myself alone, I am sorry that the African kings sold off the surplus of their subjects and that

they were brought to America, but from their standpoint it was the best thing that could have happened to them. Left in their native home they might have been cooked and eaten by hungry friends, "offered up as sacrifices" to placate offended "spirits", killed in battle by neighboring savages, or buried alive to keep company in the grave with some member of the royal family, or starved miserably in some season of famine. Left in his native country he never would have heard of God; never would have heard of Christian heaven; never would have known what it is to read, write, wear "store clothes", and to undress in the presence of white ladies in a Pullman sleeping car; never would have felt the joys of being electioneered of voting, of preaching, of passing the hat around, of sitting at a shoe-blacking stand and reading the morning paper,—"seegar" in mouth—while a little white boy kneels down to polish his number twelves; never would have known what it is to be called "Mister", and "Doctor" and "Professor" and "Bishop" or to be town councillor, Judge, U. S. Consul or Congressman from the State of Illinois like DePriest.

Had he been left alone in Africa, the negro would not have known anything about Federal patronage, philanthropic donations, etc. NEVER WOULD HAVE SEEN HIS CHILDREN EDUCATED AT THE EXPENSE OF WHITE MEN WHOSE OWN CHILDREN ARE IN THE COTTON FIELD AND COTTON MILL. He could not have attended any funerals, in whose enjoyment there are no fears of being buried alive as company to the deceased. Hot suppers, beginning with a wild frolic and winding up with gun play and razors in the air. Revivals running by the month, and climaxing in riotous "'Comin' thro'" Secret Societies, where "colored gentlemen" instruct colored audiences in the gentle art of MAKING THEMSELVES INTOLERABLE TO white people; Free Lectures and MUCH PROPAGANDA TO INSTILL THE SOCIAL EQUALITY IDEA INTO THEIR HEADS and that Hannibal was a nigger, Cleopatra a negress and Sappho, a "merlatter."

We people of the south will keep out from our section those people who are undertaking to throw a stick of dynamite into the combustable negro, negroid and other mongrels. There will be no collectivism FREE LOVE, SOCIAL AND POLITICAL EQUALITY and a fraternity which ignores the difference that God has made between the races, and which forgets the causes which have carried lost nations to their doom.

THE UNWRITTEN LAW.

Much has been said and written about the unwritten law of the South. I have heard it said many, many times while a resident of New York City that "no jury of the South is ever going to convict a man for defending his home and protecting its sanctity." I believe that statement to be true. So universal does the obligation to guard the sacredness of the home relation extend, that the discharge of it under improper invasion has ingrafted into our system of protective means the institution of "the unwritten law" which while it finds no warrant or sanction in legal codes is nevertheless an essential part of the system. Nowhere perhaps in the world, certainly not in the United States, is this more strikingly true than in the South, and the freedom with which the unwritten law is regarded here is continually bringing us under the fire of those who are wont to consider Southern people below the standards that are supposed to regulate other communities.

In this, like in any other primal trait, the people of the South are libelously misunderstood. They have exalted ideals of social conduct and they exercise those ideals to the profoundest measure of duty and respect. Indeed, their infraction of restraining rules and their apparent contempt for the laws too often proceeds from an excess of reverence for the things they cherish. Woman is a fetish of devotion and care in the estimate of the men of the South. The home is their castle of sacred firesides and inviolate thrones. None but house-

hold gods can assimulate the piety the Southerner feels for the God of Heaven. With this superlative estimate of homage is implied the jealousy with which it is bestowed, and the manifestation of it drives Southern action to the extremity of conduct under occasion of need or provocation. From it proceeds many of the things by which the South is condemned in the judgment of her slanderous critics. The South does not love lynching as an inhuman sport, but sees in it a grim and a speedy form of retribution for sins which the laws do not always, and with promptness punish. Lynching is murder, to be sure, and generally of infamous, barbarous form, but it also originates in murder and of a nature that pulls down a temple bulwarked and hedged in the everlasting terms of the "unwritten law." It is an awful truth to proclaim that lynchings in respect to a specific order of crime, rape, etc., will continue in the South so long as Southern men adhere to beliefs that the law is slow and undertake to do under the written code what is too often overdone in the unwritten one. And this because UNSCRUPULOUS lawyers by raising technical points, (even though the evidence proves the defendant guilty) saddles the state with long and tedious trials and affording them an opportunity to pad their pocket books and turning the offenders loose upon the land. There should be no such thing as mob law, neither should there be lawyers who pervert justice by the use of technicalities and turn loose upon the land some guilty criminal under the evidence and a broad interpretation of the law. I make the bold statement that mob law is DUE CHIEFLY TO LAWYERS OF A CERTAIN TYPE, to the very class loudest in its condemnation of the South. I do not refer to the honorable lawyer but to, the SHYSTER. An honorable lawyer would scorn to accept a fee from the blood-stained hand of a murderer or rapist, and then seek, by the use of technicalities of the law to acquit them. There are others who will accept employment under any flag and strike foul blows to win his fight. It is this class of lawyer that is today bringing

the legal profession into disrepute and prostituting the fair and impartial administration of justice. He will employ all arts to mislead the Court and jury to shield his client. Under the evidence the defendant might be guilty before God and yet the SHYSTER lawyer puffs himself up and denounces the jury who convicted him as "contemptable cowards." Then when a similar crime is committed, I have known shyster lawyers of this same stripe to inject themselves into a case, without employment, and in violation of the law of Alabama, as follows:

> "Any attorney appearing for a person without being employed, must, on conviction, be fined not less than five hundred dollars, and shall be incompetent to practice in any court in this state."

When these things happen, it naturally arouses the indignation of the people, and sometimes, they do what the law would have speedily done but for the SHYSTER interlopers, who could ONLY BE APPEARING FOR MONEY OR TO STIR UP STRIFE AND DISCORD, at the instigation of the International Labor Defense or some other such lawless organization. When things like this happen, don't blame the people, but blame the SHYSTER lawyers and the lawless organizations who employ them, for unlawfully injecting themselves into a case in which they had no moral or legal right to appear, and thus, by their own act and conduct forced some of the people to do what the law would have done but for these interlopers, who MUST HAVE BEEN sent to Alabama by organizations like the International Labor Defense, composed no doubt, of a lot of half breeds, negroes, negro-petters, negro lovers and anarchists, imbued with the social-equality rot and the very foolish idea that negroes should sit in the jury box with WHITE PEOPLE, in violation of our custom to select only as jurors "good men and true" and the punishment decree followed as swiftly as in the days of ancient Israel.

A man accused of crime was then tried before a jury of "his peers", or men who were more than his equal,

just as is done here in Alabama, and the day will never come in this state or the South when negroes will be permitted to sit on our juries. Negroes must and shall always be tried by juries of their "peers," outside interference to the contrary notwithstanding.

The Southern white man is the best friend the negro HAS ever had, HAS NOW or WILL EVER HAVE so long as he behaves himself and obeys the laws of the land, You, Mr. Socialist, Mr. Anarchist, Mr. Philanthropist, Mr. Communist, Mr. Social Equality Advocate, ARE HIS ENEMIES.

It seems strange to me, that whenever a black fiend is lynched in the South for his hellish crime, the negro leaders and their Northern sympathizers never waste a tear upon the WHITE WOMAN who has been overtaken by a fate *worse than death.*

Thus the negro race identifies itself with the negro rapist, and "race prejudice" results.

IF A FEW BLACK RAPISTS WERE LYNCHED BY THE BLACKS—feelings would change.

Whenever we are *defied* by outsiders to enforce our laws upon a member of the negro race we become indignant, and then there is no telling WHAT WILL HAPPEN. "Race prejudice" becomes the inevitable consequence of race prejudice: that is to say, the negroes, by their drawing of the race line in favor of a negro criminal, provokes the white race to draw it AGAINST THEM.

"If they frown at the mirror, it frowns back at them."

We Southerners are merely human and we always resent any scurrilous crusade against us.

All of the recent, phenominal and utterly unprecedented action by a lot of outsiders to save a lot of negro

criminals, on the ground of their being negroes, has, or did, maybe, create a little prejudice against those of the negro race and their stupid friends who had chosen to identify themselves with the worse members of the negro race.

This prejudice will grow, if the provocation grows. It will die out, if the fuel ceases to be heaped on.

The negro race and their Northern sympathizers will do themselves and their posterity lasting harm, if they persist in recent methods here in Alabama.

Unreasoning abuse of the State of Alabama is the unwisest course that the Northern friends of the negro race can pursue.

I have never been, am not now and never will be an advocate of mobs, but, when a lot of outside negroes and white people send lawyers into our state who set themselves up insolently and lawlessly, to defeat the law and cheat Justice, I believe then, that within certain limitations, the people who authorize court executions retain the power, themselves, to put down crime.

Within those limitations, all peoples enforce Lynch law.

Why does the law give you the right to expel the trespasser, with just such force as you find necessary? And to kill a man, to prevent him from stealing your horse, or burglarizing your house? Or to anticipate and slay the assailant who manifestly means to attempt your life?

It is because the law is too slow to save you, and you must save yourself.

In like manner, the law may be too slow and uncertain to save a menaced community, because of outside lawyers and the unscrupulous methods employed by them, then that community must exercise its inherent right to defend itself.

THE INTERNATIONAL LABOR DEFENSE AND ITS METHODS ARE DESPISED here in Alabama. You did your utmost to arouse a deep hatred of the negro, which never before existed. You sowed dragons teeth between white man and negro. By your instigation misinformed or slanderous editors have published tirades of abuse against the State of Alabama and the South. You have done your utmost to light the fires of intense sectional and race prejudice. You have tried to blow the breath of life into the Monster of Race Hatred. You have made a mistake and you are still doing so.

We regard you and your teachings among the negroes in the South as we would an epidemic disease and we propose to quarantine against you—if we can.

To be a crime, an act must be prohibited and made punishable by law, and it must be so, at the time it is committed, and at the time it is punished. This prohibition is either by the common law or by statute.

Many acts are prohibited and punished by common law, which does not rest for its authority upon any express legislative enactment, but upon usage or custom. Or it may be punished by the statute law. Unless prohibition can be found in one or the other, no act whatever, *however atrocious,* is a crime.

Murder, rape and robbery are most grievous crimes by the common law, and were punished by death, but they would not be crimes at all if the legislature should abolish the common law, as was done in several states, and inadvertently fail to enact a statute covering such acts.

In Ohio, the common law was abolished, in so far as it determines what acts are crimes, and the legislature undertook to cover the whole field by statute. It neglected, however, to provide for the punishment of a man who should have carnal knowledge of a girl UNDER TEN years of age with her consent, and when such an

act was committed in that state, the Court held and had to hold that it was not a crime, and could not be punished. I cite the case of Smith vs. State, 12 Ohio St. 466, 80 American Decisions 355. And see Mitchell vs. State, 42 Ohio St. 383, Estes vs. Carter, 10 Iowa 400.

As already stated, I am not an advocate of Lynch law, but, I have red blood in my veins, and I am of the opinion that if that child had been living in the South her seducer would not have been permitted to run at large. HE WOULD EITHER HAVE BEEN SHOT LIKE A DOG OR LYNCHED. And in that event, in the opinion of some of our critics *we would be infinitely worse than the brutal seducer of that child.* Just as they have said that those who executed a couple of black beasts for having forcibly debauched a white woman and then killed her, are infinitely worse than the fiends they put out of the world. In other words, it is more "contemptible" to string up a negro in the face of heaven than it is to pounce upon an unprotected woman, defile her and then kill her.

Those men believed that when such desperate criminals are caught and their guilt established beyond any question that the proper thing to do is to crack their necks with the least possible delay, instead of saddling themselves with the expense of long and tedious trials and affording the unemployed learned lawyers from New York an opportunity to pervert justice and turn the offenders loose upon the land.

Again I say that there should be no such thing as mob law, but it would be the part of wisdom for the two lawyers from New York and who, in the opinion of the writer, caused the killing of those two black brutes, without any delay, to inquire. WHAT BROUGHT THEM TO ALABAMA? Answer that question, WHO SENT THEM TO ALABAMA? Answer that question. WHAT DID THEY COME TO ALABAMA TO ACCOMPLISH? Answer that question.

When lawyers begin to berate mob-violence, to brand a whole State and a whole community with the stigma of Cain and consign them to the "log heap of hell" it were well to ask them if they ever shielded criminals from the sword of Justice, thereby not only provoking but making necessary the very deeds they condemn. And if they cannot return a negative answer, they should be advised to poultice their IMPUDENCE. The people of this state are neither "contemptible," "villanous" nor "cowardly" nor are our juries and courts guilty of "judicial murder."

The public is seldom agreed as to what it does want, but is quick to determine what it does not want—and it does not want SHYSTER LAWYERS to come into their state unemployed to interfere with the administration of Justice in our Courts and it does NOT WANT A RAPE-FIEND or assassin to live one minute longer than necessary to determine his guilt and put him in the electric chair. You New York lawyers who came to Alabama seem to entertain the mistaken opinion that THE PEOPLE WERE MADE FOR THE CRIMINAL AND THE CRIMINAL FOR THE LAWYER, on the principle that every bug must have smaller bugs to bite. You have fallen into the bad habit of worshipping "due process of law" because it yields fat fees from The International Labor Defense, forgetful that it is no wise worthy of adulation unless it yields also protection to the people.

I make this statement again that the lynching of the two negroes in Alabama, recently, and with which the public is familiar, was due to those two lawyers from New York, and that mob law is due chiefly to lawyers of their kind. Yes, mobs are beyond all question bad things to have in a community but as a rule they harm no man unless his guilt be established beyond the peradventure of a doubt. With the mob it is simply a question of identity and evidence. There are no delays, no loopholes in their law, no technicalities and continuances, no red tape and no fat lawyers' fees. We have mob law because we have lawlessness and we have lawlessness

because we have too many criminal shielding lawyers. Punishment, to have repressive effect upon the criminal class and satisfy the public sense of justice, must follow sure and swift upon the commission of a crime. An eye for an eye, a tooth for a tooth, and a life for a life, is not only the law of Moses, but it is a statute deep-graven on the heart of humanity by the burin of the Almighty. When one commits a dreadful crime, the public conscience demands that he speedily die the death. And when this mandate is not executed, uprisings of the people and mob violence may be expected.

This "unwritten law" question is a subject that has several sides. It has been said that "human laws may regulate human nature but they cannot control nature's whirlwinds."

Anger in some cases I believe is capable of producing "a condition of mental irresponsibility" during which one cannot be held accountable by the Courts.

Hence law in its declared portions has decreed no adequate punishment for the violation of the home. When a despoiler weans away from her husband that love which is the foundation of the marriage relation, the "unwritten law" of human nature excuses the husband who avenges himself by homicide. There is no question but that such law is an "unwritten law" of the Southern people, but whether it should be or not is a very perplexing question.

Now take the case of those two lawyers from New York concerning whom much has appeared in the press with reference to their "hasty retreat" from the State of Alabama, recently, and already referred to. Well, the public is clearly injured by acts corrupting or obstructing the administration of public justice, and therefore the common law punishes as a misdemeanor any wilful and corrupt act having this effect or tendency. At common law, any act which in itself amounts to a dis-

turbance of the public peace, or which has a direct tendency to cause a breach of the public peace is a misdemeanor and because of the tendency to cause breaches of the peace, it punishes various acts of malicious mischief, libel, etc. The principle is not limited to specific offenses, but covers any other cases in which the public peace is disturbed. Our law making body evidently having in mind the thought that the appearance of unemployed lawyers in our Courts for the defense of criminals could have no good intentions but to the contrary would so appear for the purpose of disturbing the public peace by retarding the administration of our laws, made it a misdemeanor for such lawyers to appear.

The appearance of those lawyers was a nuisance to the community in which they appeared and in order to prevent the spread of disorder, occasioned thereby, the people in good faith and for the public safety proceeded to abate said nuisance by causing said lawyers to "withdraw their presence" and beat a hasty retreat back to New York and in and about the abating of said nuisance they only used such means as are usually employed and resorted to and approved by the populace, might be such a custom as would come within the law. Since they took into consideration reasonable care and regard for the safety of others. Those who caused the abatement of said nuisance by causing said lawyers to make said hasty retreat would hardly be guilty of an indictable offense. Would they?

Is it not your understanding of the law that an act which would otherwise be a crime may be excused if the person accused can show that it was done only in order to avoid consequences which could not otherwise be avoided, and which, if they had followed, would have inflicted upon them, or upon others whom they were bound to protect, inevitable and irreparable evil; that no more was done than was reasonably necessary for that purpose; and that the evil inflicted by it was not disproportionate to the evil avoided.

Lord Mansfield in the case of Rex vs. Stratton, said:

> "Whenever necessity forces a man to do an illegal act it justifies him, because no man can be guilty of a crime without the will and intention of his mind."

Speaking for myself alone, I would like to see the Court room procedure in the entire country remied. A trial in the Court room should be made more of a judicial examination by the judge and jury and less of prize fight between the lawyers. THERE ARE TOO MANY SHYSTER LAWYERS injected into the legal profession. Few greater men have ever lived that REALLY TRUE LAWYERS. Few meaner men have ever lived than the false ones. You feel the need of a disinfectant when you approach him. He looks bad and he is bad. He is abroad in the land. The impudence of Satan is in his face and the mainspring of his existence is "boodle." Principles are, to him, things to use, trade on and desert.

Truth, honor, patriotism are so many stage habits, which he may or may not assume, and put off as the occasion may require. HE FORGETS THAT THE LAW SEEKS THE TRUTH. He does not want justice done simply because it is justice. I was speaking of the SHYSTER who unfortunately infects our profession not the TRUE LAWYER. There is NO GRANDER profession than that of the law.

What grander man ever lived than the great Roman lawyer whom Nero commanded to justify that tyrant's murder of his mother. But rather than stain his hands with the ghastly work he drew his mantle about him and went to his death. The heroes who led France from Feudalism were lawyers. Lawyers were the apostles of freedom in England. Daniel O'Connell, the great Irish lawyer, did more, during this century, to give us popular rights and the way to enforce them than any other man. He gave us the science of agitation, the peaceable marshaling of public opinion to change customs, policies and

laws; to him we owe the demonstration of the profound truth that reforms are not granted merely because they are right, but they are granted when it is no longer possible to refuse them. The signal fires of the Revolution were lit by lawers; the Declaration of Independence was written by a lawyer, so was the Constitution; Thomas Jefferson was a lawyer, and the man to whose doctrines of equality the people are now being led; our great President Franklin D. Roosevelt, is a lawyer. I could go on and on. I glory in the great opportunities that the true lawyer has to do good.

I never yet faced a jury where life, liberty and property were involved and wrong was threatened that I did not feel my breast swell—proud of the splendid privilege of being the champion of the right. Never such a thrill enters my veins as when by some just verdict, I can send back to the old home, safe now for all time, the family who love it most, and to whom every feature of the landscape is festooned with tender memories, or give back to some drooping wife—weeping bitterly and fearfully among her little ones shadowed by orphanage—the missing light, without which home would always be dark.

But of all MEAN CREATURES, deliver us from the SHYSTER lawyer who perverts truth, FERMENTS DISCORD, THINKS, ONLY OF HIS FEE and who tampers with witnesses and who would bribe jurors.

The lawyer who knowingly USES FALSE TESTIMONY, knowingly misleads the judge, knowingly takes unjust advantage of the other side, has, in my humble judgment, done an unprofessional thing and made himself a party to the crime.

Some of these days I pray that our profession may be able to rid itself of the SHYSTER LAWYER and that we may have in our courts and in our regulations less technicality and more of the spirit of justice.

When SHYSTER LAWYERS associate themselves with an organization like the International Labor Defense, who threaten the people of our State, our Courts, our Governor and the Juries with letters and telegrams in an effort to terrorize, WHITHER ARE WE DRIFTING? When lawyers become parties to the "Vendeta" in an effort to usurp the orderly procedure of the law, it it time, then, to remember, the elemental principles of jurisprudence and make use of the exception to the general rule, towit:

> "There are cases where the law, by reason of its imperfection, or the slowness of procedure, cannot do to the citizen that immediate justice which the situation demands. In such instances the citizen is justified in taking the matter into his own hands."

WE will not permit ANY SHYSTER LAWYERS TO COME INTO OUR STATE and traduce its fair name, brand our jurors as being "ignorant, illiterate, jackasses" and our people "semi-barbarous", "aflame with blood lust and race hatred," "bent on lawlessness", and deserving of another desolation of invading armies.

Speaking for myself alone, it is my deliberate opinion that a recurrence of such conduct will bring about the invoking of the exception to the general rule of the law above referred to.

This is not a threat BUT JUST GOOD ADVICE.

Never before have we had such outside influences brought to bear upon us in our enforcement of law; we have tried rich men and poor men, white men and negroes, and we have put many a man to death. Why are all of these recent trials of negroes made an exception? Why were they singled out for almost a national crusade against the State of Alabama?

WHAT IS TO BECOME OF LAW AND ORDER, IN ANY STATE, WHEN OUTSIDERS CLAIM TO RIGHT TO DICTATE IT?

When and where have any of our people interfered with the people of any other state in the administration of their laws? NEVER.

It is safe to say that no state in the Union, and no independent kingdom of the world, was ever before subjected to such an indignity. It is on a small scale, but it is a gross indignity, nevertheless.

Austria demanded of Servia the right to send her judges to try the Servian assassin of the Archduke Ferdinand, and Servia's refusal precipitated the European war. Arguing from example, The International Labor Defense and other enemies of the South believe that Servia should have granted Austria's demand.

CONCLUSION

Fair minded people of the North: Shall we never outgrow the mental warps, caused by abolition rant and rhapsody? Will "Uncle Tom's Cabin" pursue us, to the remotest fastness? Is there no hope that the North will ever cease to view us, through the lenses of 1860? In the voice of the North, is there to be, forever more, the refrain, "I am holier than thou?" Is the South always to be what Galilee was to the Jew? Are these self-righteous old croakers to ALWAYS poison the minds of Northern youth, filling them with the repellant picture of an imaginary South?

Seen through the glasses of Northern writers, New England mole hills swell into mountains, while Southern mountains sink to the level of the plain. In most Northern histories, the South appears backward, unprogressive, the tolerated black sheep of the Union and these books are teaching the children of today that our ances-

tors were rebels and traitors to the contrary they should teach them that it is to the eternal honor of the South that her ideal government triumphed over New England's attempt at democracy. Long before a Pilgrim had landed, fallen upon his knee, and then upon the Aborigines, our ancestors had planted, at Jamestown, the Tree of Life of American Democracy. Manhood suffrage, legislation by representatives, HOME RULE and trial by jury were all in full vigor, on the James, at a time when the Pilgrims and the Puritans were endeavoring to demonstrate that wisdom and power were intended, from before the foundation of the world, to be the monopoly of sour-faced bigots.

While Massachusetts restricted the vote to church members and made little distinction between a common thief, and a wicked husband who kissed his wife on Sunday, the broad minded Virginians were laying those republican foundations, upon which Bacon stood and fought the petty tyrant who represented the King.

Before the much lauded "Mayflower Compact" was signed at sea, the Jamestown representative government was in full operation; and even against the fleet of Cromwell, the Old Dominion stood firmly for Home Rule.

To the Republic, then, the South furnished its basic principles; principles which it can never depart from, without ceasing to be a Republic. John Fiske says, indeed, that North Carolina was the cradle of pure democracy.

Certain it is, that on her soil was shed the first Revolutionary blood; and at the battle of Almance, the "Spirit of '76" first really came into militant life.

It has become the fashion to say that James Otis was the John the Baptist of Independence, and that Massachusetts took the leadership of the Colonial Revolt. On the contrary, the defiant eloquence of Otis softened into

the commonplace of "obedience," and the legislature of Massachusetts voted, "We must submit."

It was in the South that the word "obedience" was stricken from the lexicon; and the legislature voted "we must resist."

It was from the South, that the clarion peal rang out, "We must fight."

It was in Virginia that the first armed movement against the royal forces was made.

The first suggestion for a Congress of all the Colonies and for the military confederacy, came from the South.

It was North Carolina that made the first Declaration of Independence. It was South Carolina that established the first organization, as a separate state.

To Virginia is due the first legislative instructions to her delegates in Congress, that all the colonies declare their independence.

In the War of Independence, all we did for the Spirit of '76 was to furnish the flaming tongue (Patrick Henry); the inspired pen (Thomas Jefferson), and the unconquerable sword (George Washington); and it was John Laurens, the South Carolinian who sped to France and got the money and the ships which put the finishing touches to Washington's work at Yorktown.

In Washington's home, the project of a stronger Union was first discussed, and it was Madison, who was the Father of the Constitution under which we live. It was Virginia that pledged her credit for the United States when the United States had no credit of their own.

These are all ancient facts but some of our Northern traducers do not seem to know anything about them, therefore, their attention should be called to the fact of just who Southern people are.

It would require a large volume to tell you all about the South, therefore, I can only give you a few historical facts.

As yet, our principles rest, and will ever rest, upon the ante-bellum Republic. The "House of Virginia" was long in power and it ruled honestly and well.

It is to the eternal honor of the South that we have looked the negro problem squarely in the face, and treated it in our own way. We mean to give the black man his natural rights but no political and social equality.

God never intended the negro to rule the Caucasian, and we of the South are DETERMINED that he shall have nothing to do with the making of our laws or the conduct of our government.

Against the jeers and the taunts and the howls of the outside world, we have stood immovable for White Supremacy and Racial purity. To a greater degree than anywhere else in the Union, we have maintained the predominance of the original stock. No type of woman has ever replaced in our affections and our reverence the Mother and the wife of the South. No type of man has dimmed for us the splendor of the manliness of the Gentleman of the South.

Whilst labor is the strength of a country, its civilization and refinement are in exact proportion to the love and respect entertained for woman.

It is easy and natural for any man to love the young and beautiful of the sex. But when beauty is gone, the eyes become dim and the cheeks furrowed with age and care and toil in their labors for mankind. IT IS THEN that the Anglo-Saxon race IN GENERAL and we of the South in particular, show our SUPERIORITY OVER THE REST OF MANKIND by the veneration and re-

spect we have towards them *because they are women.* WE HONOR OURSELVES BY HONORING THEM, for they are the conservators of all the morality, religion and even the civilization of the race.

No man can justly charge that the South is either too narrowly exclusive or unduly suspicious. She WELCOMES all who come in good faith and with HONEST PURPOSES to cast their lot with hers. But there are elements which in years past poured into other parts of the country which she does not deem desirable, and will, at least, never endeavor to attract, because she regards them as a menace to her moral welfare and her well regulated social order.

The South has laid close to heart the caution of Washington, conceived and uttered in the most critical hour of his immortal struggles for the establishment of independence, "Put none but Americans on guard." The term American as the South applies it, includes all who cherish those principles and aims which entitles them to the fullest fellowship with us, who are native here.

We will welcome you to the South and here "the mocking bird warbles his sweetest song and the darkies still sing their old time melodies and hunt possum and the coon. Here the queenly peach flushes with crimson when the sun doth kiss her cheek, and by her side the princely apples glow with deepest red; and here the orange and the magnolia bloom except when blighted by a frost from the North. Here the pear and the plum and the cherry and every kind of berry bend bough and bush like showers of ruby and of pearl. Here the hills are festooned with tankling vines embossed with purple grapes that hang in clusters like a million crystal globes filled with blushing wine, and the bananas with melting pulp of honey, and pineapples within whose purplish cones cool fountains of delicious juices flow. There are cantaloupes yielding luscious meats of salmon hue, and huge watermelons with pulps of deep carnation flowing

with glory-hallelujah. Pomegranates hang like ruddy moons and lemons like golden globes, and sometimes, a "nigger" hangs, away down south in Dixie."

It is believed by the brethren of the North that our people here in the South are not as vigorous as we should be; that we lack the snap and push necessary for the quick and permanent growth and development of our country. But they forget that we can raise three crops of potatoes in our soil in a single season; that our cotton grows without persuasion; that we can fatten our hogs on acorns and pasture our cattle the year around. They forget that our trees yield tons of persimmons per annum, and that the 'possums hang like sugar lumps from the bending limbs of the aforesaid and the same.

They forget that we can labor half the time and rest the other half and live happier than any people on the face of the earth.

I think that if we could get our New York friends to see the point and furnish the money to develop us, we could soon pay the expense of the whole government, feed and clothe the entire United States and have money left to throw at the birds and rest all the time.

Did you ever hear the story of the pilot and his peril? There was once a great overflow of the Mississippi River. In places it was forty miles wide. The faithful pilot stood at his wheel night and day to keep the steamer in the channel and save her from destruction. He stood there at his post until he was exhausted and almost dead from lack of sleep; and finally he called Uncle Ephraham, who was his roustabout, to come and take the wheel. The darkey took it and waited for instructions. "Now Uncle Ephraham," said the pilot, "do you see the North star yonder?" "Yas, suh, I see the No'th star," "Well, keep the nozzle of the boat square to the North star while I sleep a little and there'll be no danger of accident." "All right, boss; I sho' will keep her dar." But when

the old man took his eyes off the North star and looked up again, all stars looked alike to him; and when the pilot woke the boat was away out in the country and Uncle Ephraham was guiding her around rocks and hills and sandbars, and the pilot shouted: "You old fool, didn't I tell you to keep the nozzle of this boat square to the North star?" "Yas, suh, you sho did, but boss you'se been asleep heep longr'n you think you is. We'se done passed the No'th star two hours ago."

I believe there is manhood enough and virtue enough to keep the keel of the Anglo-Saxon hope and glory in the channel but the fear is in the heart of those who think that we have passed the North star of safety and that though we are gliding smoothly now, God alone knows how soon we will be in rough and turbulent waters.

I hope that you will study the questions I have in a brief way called to your attention and then to know what is your duty to yourself and to your POSTERITY then do what your CONSCIENCE tells you to do, and leave the rest to that God in whose divine economy no true word or work was ever lost.

"In ancient times they had no easy woy of 'striking a light' and making a fire. Yet it happened time and again, that there was no light to be had. The fires had been neglected, everywhere, and the whole nation found itself in darkness. To rekindle the spark was a most tedious and difficult matter; therefore, the ancients, to prevent a recurrence of the calamity, set apart certain individuals whose sole duty it was in life to keep the light burning.

In Rome the preservation of the fire was given a sacred character; a temple was built for the service and those who were set apart to feed the flame were consecrated as to a religious duty.

Pure young women were chosen as guardian angels of the sacred fire, and if one of these Vestal Virgins lost

her own purity or let the light in the temple go out, the penalty was death.

Within the temple, night and day, winter and summer, year in and year out, the Vestal Virgin watched her sacred flame. Roman eagle might be flying to the uttermost ends of the earth; Roman legions might be camping on the distant Rhine; or chasing Picts and Scots to the Grampian Hills, or forming lines of battle upon the Euphrates—but in the temple at Rome would be found the eternal fire, with the vestals feeding it, night and day.

If the light went out in the house of any Roman, rich or poor, country or town, he was not left in darkness. Straight way he betook himself to the temple and lit his torch at the fire which the Vestals had kept alive.

And all over the broad dominions of Rome there was never a fear of universal darkness, for they knew if one Vestal fell away from duty, another would take her place, and Vestals might come and Vestals go, but the light would shine forever.

Each of us is a temple, within each of us was lit the sacred fire, within each of us are the better angels of our nature, whose eternal vigilance is needed to keep the temple pure and the light trimmed and burning. As it is with the individual, so it is with the nation. The grandeur of the Republic must always rest upon the nobility of the citizen.

Does the sacred fire burn low within me? Then woe unto me—for I have lessened the Nation's splendor. Has the light gone out of your life? Then woe unto you—for the Nation has lost a part of its glory.

Consecrate the temple; keep pure and perpetual the vestal service; for it is moral death to the individual to neglect the fire; it is moral death to the Nation to lose the light."

Whatever the differences between the North and the South may be in climate, in wealth, in conditions and environments, Caucasians are all ONE PEOPLE, with common hopes and a common DESTINY. I have tried not to give any offense, but only to present the facts in the case as I see them, and whether you agree with me or not, may God bless our people of every section.

APPENDIX

In Atlanta, Ga., Birmingham, Ala., Memphis, Tenn., and New Orleans, La. during the years of 1921-1922, 61 per cent of the known killers and 70 per cent of the killed were negroes, although negroes constituted only about 30 per cent of the population of those four cities. How do you account for that?

"SOUTH MORE MORAL, LAW-ABIDING THAN NORTH" ASSERTS DR. HARPER.

University, Ala., Sept. 10.—(Special)—The South is really more moral and law-abiding than the North, taking everything into consideration, say Dr. Roland M. Harper, statistician residing at University of Alabama.

Dr. Harper has been studying some of the statistics on the subject and declares that people who take fiendish delight in saying that the South has more crime in proportion to population than the North have interpreted statistics incorrectly.

"Crime is essentially a city problem, for in small towns and farming communities where the people all know each other, it would be impossible for anyone to pursue a criminal career, although robberies may be committed by transients and neighbors may occasionally quarrel and kill each other. But in a large city the opportunities for burglars, racketeers, etc., are greater and at the same time it is comparatively easy for a criminal to lose himself in the crowds.

"As Alabama and neighboring states have only about one-fourth of their population urban, as compared with one-half to three-fourths in most of the northeastern states, it is evident that the opportunity for crime is much greater in the North.

"In the last few years the U. S. Department of Justice has been issuing monthly and quarterly reports on crime, based on voluntary returns by police officers in cities of various sizes, now totaling 1,606 and including half the population of the United States. This still leaves the rural districts unaccounted for, but one table in the latest report groups the cities according to size, and shows that most kinds of crime, and especially robbery, burglary, and larceny, are more prevalent in large cities than in the small ones; and this in spite of the fact that the largest city of all, New York, is not among these reporting.

"Another fact commonly disregarded by the South's detractors is that most of our homicides, as well as many of the other crimes, are among the colored population; so that if northern and southern whites were compared, the latter would show up to still better advantage. Dr. J. J. Durrett, former resident of Tuscaloosa and a student at the University, published several years ago a pamphlet showing among other things that in Atlanta, Birmingham, Memphis and New Orleans, in 1921 and 1922 61 per cent of the known killers and 70 per cent of the killed were negroes, although negroes constituted only about 30 per cent of the population of those four cities. A number of the criminals were strangers, never counted as part of the population."

Doesn't it seem strange that when an attempt is made to lynch a negro in New York City by their own people that the New York papers have little or nothing to say

about it. The following account is taken from the Montgomery Advertiser September 11, 1933:

NEW YORK MOB MENACES NEGRO.

Policemen with Revolvers Drawn Stop Lynching By Crowd in Subway.

New York, Sept. 10.—(AP)—Enraged citizens early today captured a burley negro in flight after an attack upon a woman in a west side subway station. Police believed the prisoner to be a marauder who recently has terrorized many in Central Park.

The negro was rescued from late home-goers in the subway by two officers with drawn pistols, when a good-sized mob gathered to shouts of "lynch him", "shoot him." The policemen were booed when they rushed the negro out of the subway.

At the station, the negro gave his name as Alvin Alfred, 25, and gave an address which officers said was fictitious.

Patrolman Peter Conway, who aided in the capture, said Alfred's description "tallied minutely" with that of the Central Park marauder, who has been the object of an intensive manhunt.

Mrs. Bertha Carrol, 32, victim of the assault in the women's restroom of the subway, was taken to a hospital suffering from shock, severe bruises and lacerations.

Mrs. Carrol was carrying a jar of jam when she stepped into the rest-room about 2:30 a.m. Her husband, William, was standing on the platform watching for their train.

She told police a huge negro, stripped to the waist and barefooted, seized her when she entered the rest-room and tore the jar of jam from her hands. She

screamed, she said, and the negro smashed the jar over her head and knocked her down.

Carrol, a huskey butcher, rushed into the rest room where he said the negro was bending over his wife beating her with his fists.

Carrol picked the negro bodily from the floor and hurled him against the wall. As they fought, Mrs. Carrol crawled to the station platform and called to a man who ran for the police.

Eluding Carrol, the negro jumped to the tracks and fled toward the next station with a crowd of men, who had gathered quickly, at his heels. A down-town local train ended the chase at the next station, where the negro was handled roughly by a fast growing crowd.

Officers at this point entered the station and, with drawn pistols, took the negro away.

I hereby certify that I served a copy of this motion with Exhibits thereto, on Hon. Thomas E. Knight, Jr. Attorney General, November 20, 1933.

G. W. CHAMLEE.

JOSEPH R. BRODSKY, called by the State, testified:

I don't know Victor Elwood. I never met him and know nothing about him. The matter of getting these affidavits was discussed in my office in New York. We wanted to find out the state of mind in Morgan County,—what it was, also here in Decatur, and I retained an attorney by the name of David Schriffman, whose affidavit is hereunto annexed. My instructions to Mr. Schriffman were to get as responsible an investigator as possible for him to get and send them into Morgan County

and for them to make inquiry and find out what the people thought about it, whether it was favorable or unfavorable, and regardless of where it hit, or who it hurt. I told him that I wanted the truth and nothing but the truth, and when he got that information to put it in the form of an affidavit and let the investigators swear to it before an officer and send it up to New York, so that I could have the affidavits before me in preparing this motion. The attorney employed by me came here before me. I know none of the persons whose affidavits are annexed to the motion. The attorney is here.

Cross Examination:

That is all I know about the preparation of the affidavits.

DAVID SCHRIFFMAN, a witness for the State, being sworn, testified:

Direct Examination:

I am a resident of the City of New York and practice law in New York. I do not practice in connection with Mr. Brodsky and am not in his office at all. Mr. Brodsky employed me to secure investigators to come into Morgan County to ascertain the sentiment in Morgan County. He called me and asked me to come to his office to see him, I have forgotten the exact date, but it was sometime in July. Mr. Brodsky conferred with me a good while, and he asked me to procure some good investigators, and while not his exact words, asked me to come into the south and secure the proper men to come into Morgan County and inquire into the sentiment in Morgan County relative to the Scottsboro cases. I accepted that employment. I employed Victor Elwood, Jim Jones and John Williams, and I, myself, made an affidavit. They are the ones that have been offered here. Jim

Jones is a resident of Birmingham. For obvious reasons I cannot divulge his address. I don't know where his residence is, The obvious reasons why I couldn't divulge his address are that Jim Jones is a negro, and he told me at the first talk that he was to be had, and I don't believe he told me where he lived. He was sent to me through other people. I don't know whether Jim Jones talked to and interviewed any persons except colored people. I told him to go into Morgan County and ascertain the sentiment of the people in the county. I told him to see as many people as he could, and some white people if he could. I couldn't ascertain if he is a trained investigator. I employed him because he was recommended to me. Victor Elwood resides in Birmingham also. He is white. He resides in Ensley; I don't know exactly where it is. I don't know his occupation. I think as a matter of fact he was out of work at the time. I don't know whether he did or not. He said he could come into Morgan County, and make the investigation. I don't know whether he used any disguise. The first time he reported to me was in July. I don't know the exact date; the date is here on the affidavit. He came back at the end of the trip. He may have been gone on that trip a week. I was at Birmingham, at the Y. M. C. A. there. I think he made four affidavits. I don't know how he obtained the information except as stated in his affidavits. I certainly do not know whether he used the telephone directory or the city directory to obtain addresses from them. I don't know whether or not any of the people that he says that he had conversation with have been dead for a number of years. Another investigator was John Williams who resides in Birmingham, I think on the south side. I paid these people for performing these services. I, myself, employed them. I met them at various places in Birmingham; at no one certain place. I, myself, came into Morgan County and investigated. I drove into Morgan County from Birmingham and drove through it to the north. I stopped at the first gasoline station outside of Morgan County; stopped for some gas, and there

were quite a number hanging around there. I spoke with a number that were there, and introduced the subject, or mentioned the Scottsboro cases, which immediately secured their interest. I would usually go into the question of where the Scottsboro cases would be tried, and one of them would say: "Those Damned niggers got a fair trial up there" and such as that. I didn't ascertain their names. I was going through to Nashville, and then I was coming back. My real purpose was to investigate Morgan County. I stopped four or five hours in Morgan County. I was traveling through very slowly. I went through from the beginning of Morgan County, say Falkville, I believe, I stopped there, and I forget how I got into Danville, but I went through Danville, and then I was in Hartselle, and then I came on to Decatur, and was around Decatur for a little while and then I kept on. There is one name I think that I remember in Nashville. There is a sort of a gin there that also sells gasoline, and I stopped there for gasoline, and I think the name is Lee. I stopped there at least fifteen minutes, and besides Mr. Lee there was some persons inside. He told me in substance the same thing that is set out in my affidavit. I did not represent myself as anything at all. I don't know Jim Jones' occupation, or where he resides at the present time nor Victor Elwood, except that he is at Ensley. He isn't working at the present time, so far as I know. I think he had work at the time, I employed him, but I don't know; he said that he was working for some mill, some steel mill, I don't know where it was. Jim Jones was some five feet, eight or nine inches, clean shaven.

Elwood, I would say, is about five feet, ten inches tall. He is clean shaven.

Charles Williams has dark hair, and is a man of about five feet, eight or nine inches. He has a moustache, I think a small moustache.

I do not know S. J. Hazel. I do not know A. J. Barber. I don't know anybody there to be frank with you. I do not know W. R. Kennedy.

I am still employed by Mr. Brodsky.

The state then introduced in evidence, the following affidavits:

State of Alabama, }
Morgan County, } ss.:

Before me, Mary E. Gargus Meadows, a Notary Public in and for said State and County, personally appeared J. W. Lynn, who being duly sworn deposes and says that he resides in beat 14 in Morgan County, Alabama, and has resided there for 47 years; that he is acquainted with a great number of persons residing in all beats of Morgan County, Alabama and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Eugene Williams are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants

will be accorded a fair and impartial trial before a fair and impartial jury.

J. W. LYNN,
Affiant.

Subscribed and sworn to before me
this the 20 day of November, 1933.

MARY E. GARGUS MEADOWS,
Notary Public,
Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Mary E. Gargus Meadows, a Notary Public, in and for said State and County, personally appeared J. E. Weinman, who being duly sworn deposes and says that he resides in beat 10; in Morgan County, Alabama and has resided there for 44 years; that he is acquainted with a great number of persons residing in all beats of Morgan County, Alabama, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is Plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Eugene Williams are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatever. Affiant further states that any feeling which might have existed

against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before and fair and impartial jury.

J. E. WEINMAN.

Subscribed and sworn to before me
this the 20 day of November, 1933.

MARY E. GARGUS MEADOWS,
Notary Public,
Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Mary E. Gargus Meadows, a Notary Public in and for said State and County, personally appeared J. W. Sivley who being duly sworn deposes and says that he resides in beat 5 in Morgan County, Alabama, and has resided there for 40 years; that he is acquainted with a great number of persons residing in all beats in Morgan County, Alabama, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Eugene Williams are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with

his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorney immediately following the April trial has long since expired and that the people of Morgan County with whom he talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury.

J. W. SIVLEY.

Subscribed and sworn to before me
this the 20 day of November, 1933.

MARY E. GARGUS MEADOWS,
Notary Public,
Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Mary E. Gargus Meadows, a Notary Public in and for said State and County, personally appeared J. D. L. Burns, who being duly sworn deposes and says that he resided in beat 12 in Morgan County, Alabama, and has resided there for 1 year; that he is acquainted with a great number of persons residing in beats 12 and 1 and all in Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Eugene Williams are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys, or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed

a desire that each the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury.

J. D. L. BURNS.

Subscribed and sworn to before me
this the 20 day of November, 1933.

MARY E. GAMMON MEADOWS,
Notary Public,
Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, J. M. Minor, a Justice of the Peace in and for said State and County, personally appeared J. D. [illegible]kinson, who being duly sworn, deposes and says that he resides in beat 20, in Morgan County, Alabama, and has resided there for 58 years; that he is acquainted with a great number of persons residing in practically all beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Eugene Williams are defendants; that in discussing the approaching trial

or trials he has heard no threats made against the above named defendants, their attorneys or against any one connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Mogran County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury.

J. D. ATKINSON,
Affiant.

Subscribed and sworn to before me
this the 17th day of November, 1933.

J. M. Mixon,
Justice of the Peace,
Morgan County,
Alabama.

State of Alabama,
Morgan County, } ss.:

Before me, Mary E. Gargus Meadows, a Notary Public in and for said State and County, personally appeared Carl H. Gibson who being duly sworn deposes and says that he resides in beat 1 in Morgan County, Alabama, and has resided there for 11 years; that he is acquainted with a great number of persons residing in all beats in Morgan County, Alabama, that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie

Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Eugene Williams are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County, Alabama with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury.

CARL H. GIBSON,
Affiant.

Subscribed and sworn to before me
this the 20 day of Nov., 1933.

MARY E. GARGUS MEADOWS,
Notary Public,
Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Mary E. Gargus Meadows, a notary public in and for said State and County, personally appeared Lewis C. Brown, who being duly sworn deposes and says that he resides in beat 1 in Morgan County, Alabama, and has resided there for 25 years; that he is acquainted with a great number of persons residing in all beats in

Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright, and Eugene Williams are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with the defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trials has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury.

LEWIS C. BROWN,
Affiant.

Subscribed and sworn to before me
this the 20 day of Nov., 1933.

MARY E. GARGUS MEADOWS,
Notary Public,
Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Mary E. Gargus Meadows, a Notary Public in and for said State and County, personally appeared W. V. Davidson, who being duly sworn deposes and says that he resides in beat 1, in Morgan County,

Alabama, and has resided there for 35 years; that he is acquainted with a great number of persons residing in Morgan County, Alabama; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Eugene Williams are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury.

W. V. DAVIDSON,
Affiant.

Subscribed and sworn to before me
this the 20 day of Nov., 1933.

MARY E. GARGUS MEADOWS,
Notary Public,
Morgan County,
Alabama.

State of Alabama,
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said State and County, personally appeared L. W. Brown, who being duly sworn deposes and says that he

resides in beat 16, in Morgan County, Alabama, and has resided there for 63 years; that he is acquainted with a great number of persons residing in all over Morgan County, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. FARMER.

L. W. BROWN,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

OTTO MOEBES,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said State and County, personally appeared E. H. Peck,

who being duly sworn deposes and says that he resides in beat 1, in Morgan County, Alabama, and has resided there for 30 years; that he is acquainted with a great number of persons residing in every beat in Morgan County, Alabama, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants; their attorneys, or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon the conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. COUNTRY MERCHANT.

E. H. PECK,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

Otto Morris,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County. } ss.:

Before me, Otto Moebes, a Notary Public in and for said State and County, personally appeared A. H. Norris, who being duly sworn deposes and says that he resides in beat 2, in Morgan County, Alabama, and has resided there for 42 years; that he is acquainted with a great number of persons residing in every beat in Morgan County beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. FARMER.

A. H. NORRIS,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

Otto Moebes,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a notary public in and for said State and County, personally appeared C. G. Lucia, who being duly sworn, deposes and says that he resides in Beat One in Morgan County, Alabama, and has resided there for 20 years; that he is acquainted with a great number of persons residing in Lane's Beat and Beat one beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. MERCHANT AT LANE'S BEAT.

C. G. LUCIA,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

OTTO MOEBES,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said State and County, personally appeared L. B. Norris, who being duly sworn deposes and says that he resides in beat 2 in Morgan County, Alabama, and has resided there for 42 years; that he is acquainted with a great number of persons residing in every beat in Morgan County beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. COUNTRY MERCHANT.

L. B. NORRIS,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.
OTTO MOEBES,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said State and County, personally appeared T. A. Sheats, who being duly sworn deposes and says that he resides in Beat 1 in Morgan County Alabama, and has resided there for 26 years; that he is acquainted with a great number of persons residing in practically all of Morgan County beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. LAND OWNER AND RETIRED MERCHANT.

T. A. SHEATS,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

OTTO MOEBES,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said State and County, personally appeared James C. Sims, who being duly sworn deposes and says that he resides in beat 11 in Morgan County, Alabama, and has resided there for ..... years; that he is acquainted with a great number of persons residing in Beat 1 and 11 beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. FARMING.

JAMES P. SIMS,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.
OTTO MOEBES,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said State and County, personally appeared E. R. Clements, who being duly sworn deposes and says that he resides in Beat 11 in Morgan County, Alabama, and has resided there for 7 years; that he is acquainted with a great number of persons residing in Beats 10, 5, 1, 9, 16, 3, 18, 14, beats and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. DRUGGIST.

E. R. CLEMENTS,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

OTTO MOEBES,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said State and County, personally appeared A. G. Emens, who being duly sworn deposes and says that he resides in Beat 11, in Morgan County, Alabama, and has resided there for 31 years; that he is acquainted with a great number of persons residing in 1 and eleven beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trial to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys, or against anyone connected with their defense; that all of the persons with whom he had discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. MERCHANT.

A. G. EMENS,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

Otto Moebes,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said State and County, personally appeared Herbert O. Sively, who being duly sworn deposes and says that he resides in beat 11 in Morgan County, Alabama, and has resided there for 13 years; that he is acquainted with a great number of persons residing in Beats 1—11 beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial and that he is of the opinion based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial, in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. HERBERT O. SIVLEY, MERCHANT.

HERBERT O. SIVLEY,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

Otto Moebes,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said State and County, personally appeared F/ D. Lyle, who being duly sworn, deposes and says that he resides in beat 11 in Morgan County, Alabama, and has resided there for 53 years; that he is acquainted with a great number of persons residing in nearly all beats in Morgan County beats, and through Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. F. D. LILE, POSTMASTER AT TRINITY, ALABAMA.

F. D. LILE,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

Otto Moebes,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said State and County, personally appeared R. M. Grantland, who being duly sworn deposes and says that he resides in beat 11, in Morgan County, Alabama, and has resided there for 16 years; that he is acquainted with a great number of persons residing in every beat in Morgan County beats, and throughout Morgan County; that he has talked to numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. FARMING.

R. M. GRANTLAND,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

OTTO MOEBES,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said State and County, personally appeared Erman C. Grantland, who being duly sworn deposes and says that he resides in beat 11 in Morgan County, Alabama, and has resided there for 16 years; that he is acquainted with a great number of persons residing in beat nine beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. FARMER.

ERMAN C. GRANTLAND,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

OTTO MOEBES,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said State and County, personally appeared Rayburn Neville, who being duly sworn deposes and says that he resides in beat 11, in Morgan County, Alabama, and has resided there for life years; that he is acquainted with a great number of persons residing in 11 beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, William Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired, and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. MERCHANT.

RAYBURN NEVILLE,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

OTTO MOEBES,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said State and County, personally appeared J. R. Brown, who being duly sworn deposes and says that he resides in beat 16 in Morgan County Alabama, and has resided there for 58 years; that he is acquainted with a great number of persons residing in all over Morgan County beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. FARMER.

J. R. BROWN,
Affiant.

Subscribed and sworn to before me this the 16 day of Nov., 1933.

OTTO MOEBES,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said State and County, personally appeared S. J. Woodall, who being duly sworn deposes and says that he resides in beat Lane's in Morgan County, Alabama, and has resided there for 14 years; that he is acquainted with a great number of persons residing in all parts of Morgan County beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. COUNTRY MERCHANT.

S. J. WOODALL,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

Otto Moebes,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said State and County, personally appeared L. E. Blankenship, who being duly sworn deposes and says that he resides in beat 9, in Morgan County, Alabama, and has resided there for 39 years; that he is acquainted with a great number of persons residing in all over Morgan County beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, William Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. FARMER.

L. E. BLANKENSHIP,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

Otto Moebes,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said State and County, personally appeared E. A. Poteet, who being duly sworn deposes and says that he resides in beat 9, in Morgan County, Alabama, and has resided there for 11 years; that he is acquainted with a great number of persons residing in all over Morgan County beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired, and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. FARMER.

E. A. POTEET,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

Otto Moebes,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said State and County, personally appeared Lonnie Cain, who being duly sworn deposes and says that he resides in beat 9, in Morgan County, Alabama, and has resided there for 46 years; that he is acquainted with a great number of persons residing in all over Morgan County, beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired, and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. GINNER.

LONNIE CAIN,
Affiant.

Subscribed and sworn to before me this the 16 day of Nov., 1933.

OTTO MOEBES,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Roy O. Wyatt, a Notary Public in and for said State and County, personally J. E. Lee, who being duly sworn deposes and says that he resides in beat 12, in Morgan County, Alabama, and has resided there for 14 years; that he is acquainted with a great number of persons residing in Priceville, Somerville beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow-citizens that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury; that I am a merchant, farmer and also run a public Grist mill and I come in constant contact with people from both of the above named beats.

J. E. LEE,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.
ROY O. WYATT,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Roy O. Wyatt, a Notary Public in and for said State and County, personally appeared Ras Lyle, who being duly sworn deposes and says that he resides in beat 12 in Morgan County, Alabama, and has resided there for 12 years; that he is acquainted with a great number of persons residing in Priceville and Somerville beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright, and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. I am a farmer and do general trading and am in constant touch with the general public.

RAS LYLE,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

ROY O. WYATT,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Roy O. Wyatt, a Notary Public in and for said State and County, personally appeared A. M. Dunnaway, who being duly sworn deposes and says that he resides in beat 9, Morgan County, Alabama, and has resided there for 50 years; that he is acquainted with a great number of persons residing in every beat in Morgan County beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff, and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. I am a member of the board of Revenue of Morgan County for 5 years and have been in mercantile business for about 30 years and I acquainted with substantially the citizenship of the county having made political campaigns in this county.

A. M. DUNNAWAY,
Affiant.

Subscribed and sworn to before me this the 16 day of Nov., 1933.

ROY O. WYATT,
Notary Public,
Morgan County,
Alabama.

(Seal)

State of Alabama, }
Morgan County, } ss.:

Before me, Roy O. Wyatt, a Notary Public in and for said State and County, personally appeared W. W. Turney, who being duly sworn deposes and says that he resides in beat 9 in Morgan County, Alabama, and has resided there for 15 years; that he is acquainted with a great number of persons residing in Somerville, Ogden Ridge, Centergrove beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trial to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright, and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired, and the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. I was a merchant from 1920 until 1932 and during that time and until the present time was in constant touch with the general public.

W. W. TURNEY,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.
ROY O. WYATT,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Roy O. Wyatt, a Notary Public in and for said State and County, personally appeared R. L. Murphy, who being duly sworn, deposes and says that he resides in beat——in Morgan County, Alabama, and has resided there for 53 years; that he is acquainted with a great number of persons residing in Valhermoso Springs, Lacy Springs and Somerville beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff, and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell and Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversations with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. I am a merchant at Woodland Mills and have been in business here since 1916 and have been since that time in constant touch with the general public.

R. L. MURPHY,
Affiant.

Subscribed and sworn to before me this the 16 day of Nov., 1933.

ROY O. WYATT,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Roy O. Wyatt, a Notary Public in and for said State and County, personally appeared Owen Chunn, who being duly sworn deposes and says that he resides in beat 8, in Morgan County, Alabama, and has resided there for 40 years; that he is acquainted with a great number of persons residing in Valhermoso, Lacy Springs and Wolf beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff, and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. I am a merchant here in this beat and have been for many years and come in daily contact with the general public.

OWEN CHUNN,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

ROY O. WYATT,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Roy O. Wyatt, a Notary Public in and for said State and County, personally appeared E. H. Dean, who being duly sworn, deposes and says that he resides in beat 8, in Morgan County, Alabama, and has resided there for 63 years; that he is acquainted with a great number of persons residing in Valhermoso, Lacey Springs and Wolf beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff, and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys, or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. I have been in the mercantile business here for about 25 years, and since the above cases have been pending in this county I have been in daily contact with the general public.

E. H. DEAN,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

ROY O. WYATT,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Roy O. Wyatt, a Notary Public in and for said State and County, personally appeared B. H. Garrison, who being duly sworn deposes and says that he resides in Beat 8, Morgan County, Alabama, and has resided there for 35 years; that he is acquainted with a great number of persons residing in Valhermoso, Lacy Springs and Wolf beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys, or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. I have served as deputy sheriff in the northeast corner of Morgan County for approximately twenty years.

B. H. GARRISON,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.
ROY O. WYATT,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Roy O. Wyatt, a Notary Public in and for said State and County, personally appeared J. G. Black, who being duly sworn deposes and says that he resides in Beat 20 in Morgan County, Alabama, and has resided there for 47 years; that he is acquainted with a great number of persons residing in Lacy Springs, Wolf and Valhermoso beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. Affiant further states that he is a farmer and has resided in Lacy Springs for many years and comes in contact with the general public daily.

J. G. BLACK,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

ROY O. WYATT,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Roy O. Wyatt, a Notary Public in and for said State and County, personally appeared W. T. Oliver, who being duly sworn deposes and says that he resides in Beat 18, in Morgan County, Alabama, and has resided there for 12 years; that he is acquainted with a great number of persons residing in Ryan's Cross Roads and Gum Pond beats, and throughout Morgan County; that he has talked with a number of persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. Affiant further says that he is a merchant and comes in contact with the public daily.

W. T. OLIVER,
Affiant.

Subscribed and sworn to before me this the 16 day of Nov., 1933.

ROY O. WYATT,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Roy O. Wyatt, a Notary Public in and for said State and County, personally appeared J. A. Foreman, who being duly sworn deposes and says that he resides in beat 7, in Morgan County, Alabama, and has resided there for 65 years except 14 years in Decatur; that he is acquainted with a great number of persons residing in Applegrove, Ryan's Cross Roads, Florett, Wolf beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright, and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. Affiant further says that he has served one term as sheriff of Morgan County, one term as County Commissioner and one term as Representative in the Legislature from Morgan County and is reasonably well acquainted with the citizens of this county.

JAMES A. FOREMAN,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

ROY O. WYATT,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Roy O. Wyatt, a Notary Public in and for said State and County, personally appeared E. C. Ryan, who being duly sworn deposes and says that he resides in Beat 7, in Morgan County, Alabama, and has resided there for 41 years; that he is acquainted with a great number of persons residing in Ryan's Cross Roads, Applegrove, Florette beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell and Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. Affiant further states that he is a farmer and has a wide acquaintance in the above named beats, and that he has carried the mail as substitute for about 3 years in this section of the country.

E. C. RYAN,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.
ROY O. WYATT,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Roy O. Wyatt, a Notary Public in and for said State and County, personally appeared Adam Shaneyfelt, who being duly sworn deposes and says that he resides in Beat 17, in Morgan County, Alabama, and has resided there for 16 years; that he is acquainted with a great number of persons residing in Eva (Oden Ridge) Falkville, Lawrence's Cool and Rock Creek beats and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats being made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. Affiant further says that he is a merchant in the Oden Ridge Division of Eva Beat, and is reasonably well acquainted with the citizenship of the above named beats.

ADAM SHANEYFELT,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

ROY O. WYATT,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Roy O. Wyatt, a Notary Public in and for said State and County, personally appeared E. B. Oden, who being duly sworn deposes and says that he resides in Beat 17, in Morgan County, Alabama, and has resided there for 2 years; that he is acquainted with a great number of persons residing in Eva beats and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. That he is a merchant and comes in daily contact with the general public.

E. B. ODEN,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

ROY O. WYATT,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Roy O. Wyatt, a Notary Public in and for said State and County, personally appeared M. M. Hipps, who being duly sworn deposes and says that he resides in Beat 17, in Morgan County, Alabama, and has resided there for 10 years; that he is acquainted with a great number of persons residing in Eva, Gum Pond and Lawrence Cove beat and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. That he is a substitute mail carrier and as such comes in daily contact with the general public.

M. M. HIPPS,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

ROY O. WYATT,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Roy O. Wyatt, a Notary Public in and for said State and County, personally appeared D. W. S. Bean, who being duly sworn deposes and says that he resides in Beat 5, in Morgan County Alabama, and has resided there for 60 years; that he is acquainted with a great number of persons residing in Falkville, Eva, Gum Pond and Lawrence Cove beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the state of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys, or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. That he is a practicing dentist and has practiced in this county for about 40 years and that he comes in daily contact with the public generally.

W. S. BEAN,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.
ROY O. WYATT,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Roy O. Wyatt, a Notary Public in and for said State and County, personally appeared V. O. Clark, who being duly sworn deposes and says that he resides in Beat 5, in Morgan County, Alabama, and has resided there for 30 years; that he is acquainted with a great number of persons residing in Falkville, Lacon, Massey and Eva beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys, or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversations with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. That he has been in the banking business since 1916 and has come into contact daily with the general public.

V. O. CLARK,
Affiant.

Subscribed and sworn to before me this the 16 day of Nov., 1933.

Roy O. Wyatt,
Notary Public.
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Roy O. Wyatt, a Notary Public in and for said State and County, personally appeared Addie Vest, who being duly sworn deposes and says that he resides in Beat 5, in Morgan County, Alabama, and has resided there for 13 years; that he is acquainted with a great number of persons residing in Falkville, Danville, Massey, Eva and Lacon beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys, or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. That he has been in the fertilizer, cotton and stock business for 13 years and has come constantly in touch with the general public.

ADDIE VEST,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

ROY O. WYATT,
Notary Public,
(Seal) Morgan County,
Alabama.

At this point court recessed until 8:30 o'clock A. M., November 23rd, 1933.

DAVID SCHRIFTMAN, recalled:

Re-direct Examination:

With reference to Victor Elwood, Charles Williams, Jim Jones and John Williams, I was present when these affidavits were made. The oath was administered. They held up their hands and swore to them.

W. T. WILLOUGHBY, sworn in behalf of the State, testified:

Direct Examination:

My name is Mr. W. T. Willoughby. I live at 611 Fourth Avenue West. I have lived there about three years. I did not meet one John Williams, that I know of, on the 28th, 29th, 30th or 31st of October or the first of November, this year, 1933. No person representing himself to be John Williams came to see me. I did not on either of the dates mentioned, have a conversation with any person in Morgan County, in substance or to the effect, in which I expressed the opinion or desire that that the defendants in this so-called Scottsboro case should be hung by their necks, or swung from a tree, or killed, or taken out and done away with, or should get their necks broke. I did not have any conversation at all of that character or kind. I did not have any conversation to the effect that the residents of Decatur were of one mind and that no quarter should be shown the Scottsboro defendants when they came up for trial. I did not state that the Scottsboro negroes ought to be strung up together with the jews. I did not make any statement to

the effect that the Jew lawyer had better stay away from Decatur, or it would be a one-way trip for him. I did not make a statement to the effect that Ruby Bates ought to be strung up with the negroes. I have not had any conversation with any person relative to the Scottsboro negroes, so-called, except maybe some one in town would ask me something concerning the case. I haven't had any conversations at all about it, except that kind. Even to those persons, I did not express any such sentiments or opinions as have just been read to me from the affidavit.

I have lived in Morgan County nearly seven years. I shall have been a deputy sheriff in Morgan County seven years next January. I am thoroughly conversant with the sentiment in Morgan County and know people in each beat in the county. I am more or less constantly in contact with people throughout the county. From my contacts with people throughout the county, I have not heard any such expressions coming from any source in the county as would lead me to believe that the defendants, at the present time, cannot have a fair and impartial trial in Morgan County. In my opinion, they can have a fair and impartial trial in Morgan County at this time.

Cross Examination:

I am forty-two years old, and shall have lived here seven years in January. When I speak of a fair and impartial trial, I mean they can get a jury that will go by the weight of the evidence. I have talked to folks about a fair trial. It has been discussed a good deal here in the county. I don't know how often; I wouldn't begin to say. Well, I haven't asked any one if they believed they could get a fair trial.

A. S. BLACKWELL, sworn on behalf of the State, testified:

Direct Examination:

My name is A. S. Blackwell. I do not know Victor Elwood. I live on Route 2, Decatur. I do not know of any other person living on route two, Decatur, by the name of A. S. Blackwell. As far as I know I am the only A. S. Blackwell on that route. I have lived out there all my life.

I did not ever, that I know of, have any conversation with any one by the name of Victor Elwood. I did not ever have a conversation with anybody with reference to the so called Scottsboro cases in which conversation I said that it was my opinion that the negroes were guilty, and if they were freed that it would cause a lot of trouble. I know a good many people in this county. I know practically all of the people in the community in which I live and am somewhat conversant with the feeling in Decatur. In my opinion these defendants can have a fair and impartial trial in Morgan County.

I am probate clerk in the probate office about ten years. I was clerk of the Circuit Court from 1911 to 1917.

Cross Examination:

I am in Judge Malone's office. I have not talked with any one, any large numbers, as to whether or not the defendants could get a jury that have no opinions about this case. I have made no effort to find out the sentiment as to what jurors would say, or what they would think. I have no idea about the number of people you have talked to about the Scottsboro cases. I have no recollection of stating that, in my opinion, these defendants were guilty. I cannot recall saying that to anybody. I have not said that if they were released they would cause somebody a lot of trouble. I don't know whether it would; I don't think so.

WHEREUPON, the State introduced the following affidavits:

State of Alabama, }
Morgan County, } ss.:

Before me, J. W. Bailey a Justice of the peace in and for said state and county personally appeared C. A. Moore who being duly sworn deposes and says that he is connected with Sam Frank and Moore, a hardware store in Decatur, Morgan County, Alabama, and that he has been informed that counsel for defendant Haywood Patterson have made the allegation that during the progress of the trial of said defendant, the hardware stores in Decatur, Alabama, were completely emptied and sold out of arms and ammunition purchased by white citizens who were preparing for armed attacks. He states that such allegation is wholly untrue and false in so far as the store with which he is connected is concerned, and that during that time the sale of fire arms and ammunition was no more than usual.

(Signed) C. A. MOORE.

Sworn to and subscribed before me
this the 21st day of June, 1933.

J. W. Bailey,
Justice of Peace.

State of Alabama, }
Morgan County, } ss.:

Before me, Ruby S. Jones, a Notary Public in and for said state and county personally appeared W. E. Sivley, who being duly sworn deposes and says that he is connected with Sivley & Sandlin, a hardware store in Decatur, Morgan County, Alabama, and that he has been informed that counsel for the defendant Haywood Patterson have made the allegation that during the progress of the trial of said defendant, the hardware stores in

Decatur, Alabama were completely emptied and sold out of arms and ammunition purchased by white citizens who were preparing for armed attacks. He states that such allegation is wholly untrue and false in so far as the store with which he is connected is concerned, and that during that time the sale of fire arms and ammunition was no more than usual.

(Signed) W. E. SIVLEY.

Sworn to and subscribed before me
this the 21st day of June, 1933.

Reny S. Jones,
Notary Public,
Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Annie L. Morris, a notary public in and for said state and county personally appeared John W. Wyker, who being duly sworn deposes and says that he is connected with John D. Wyker & Son, a hardware store in Decatur, Morgan County, Alabama, and that he has been informed that counsel for the defendant Haywood Patterson have made the allegation that during the progress of the trial of said defendant, the hardware stores in Decatur, Alabama, were completely emptied and sold out of arms and ammunition purchased by white citizens who were preparing for armed attacks. He states that such allegation is wholly untrue and false in so far as the store with which he is connected is concerned, and that during that time the sale of fire arms and ammunition was no more than usual.

JNO. D. WYKER.

Sworn to and subscribed before me
this the 21st day of June, 1933.

Annie L. Morris,
Notary Public,
Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Ruby J. Jones, a notary public in and for said county personally appeared C. F. Watterson, who being duly sworn deposes and says that he is connected with Davis Hodges, a hardware store in Decatur, Morgan County, Alabama, and that he has been informed that counsel for defendant Haywood Patterson have made the allegation that during the progress of the trial of said defendant, the hardware stores in Decatur, Alabama were completely emptied and sold out of arms and ammunition purchased by white citizens who were preparing for armed attacks. He states that such allegation is wholly untrue and false in so far as the store with which he is connected is concerned, and that during such time the sale of fire arms and ammunition was no more than usual.

C. F. WATTERSON.

Sworn to and subscribed before me
this the 21st day of June, 1933.

Ruby S. Jones,
Notary Public,
Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Mary E. Gargus Meadows, a Notary Public in and for said state and county personally appeared Fred S. Robinson who being duly sworn, deposes and says that he was present in the court room when Hon. Wade Wright, Solicitor of the Circuit court of Morgan County, was addressing the jury in the case of the State of Alabama v. Haywood Patterson and that he payed very close attention to said address and that he did not

hear any "amens" or "nos" expressed by the audience showing their approval of the Solicitor's speech. That the audience was very quiet and respectful and that no remarks were made in his presence or within his hearing which might have prejudiced the jury against the defendant, Haywood Patterson.

(Signed) FRED S. ROBINSON.

Sworn to and subscribed before me
this the 21st day of June, 1933.

MARY E. GARGUS MEADOWS,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Mary E. Gargus Meadows, a notary public in and for said state and county, personally appeared Aaron A. Walton who being duly sworn deposes and says that he was present in the court room when Hon. Wade Wright, Solicitor of the Circuit Court of Morgan County, was addressing the jury in the case of the State of Alabama v. Haywood Patterson and that he payed very close attention to said address and that he did not hear any "Amens" or "nos" expressed by the audience showing their approval of the Solicitor's speech. That the audience was very quiet and respectful and that no remarks were made in his presence or within his hearing which might have prejudiced the jury against the defendant, Haywood Patterson.

(Signed) AARON A. WALTON.

Sworn to and subscribed before me
this the 21st day of June, 1933.

MARY E. GARGUS MEADOWS,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Mary E. Gargus Meadows, a notary public in and for said state and county personally appeared Fred Morgan who being duly sworn deposes and says that he was one of the veniremen drawn for the trial of the case of the State of Alabama vs. Haywood Patterson. That while Mr. Leibowitz, counsel for the defendant, was examining some of the other veniremen on their voir dire examination that he did approach the court and stated to him that prospective jurors of Morgan County were not accustomed to the type of examination which counsel was making and desired to have the court or counsel to explain to them what counsel was doing, but that he did not state to the court that counsel for defendant, "had no right to instruct the jury as to the law." He further states that he might have stated that "We in Morgan County have been in the habit of receiving our law from the court", but that said statement, if made, was only for the purpose of explaining his request for information as to the procedure followed by counsel for defendant.

(Signed) FRED MORGAN.

Sworn to and subscribed before me
this the 21st day of June, 1933.

MARY E. GARGUS MEADOWS,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Mary E. Gargus Meadows, a Notary Public in and for said state and county personally appeared A. W. David, who being duly sworn deposes and says

that he is the Sheriff of Morgan County and has been since January, 1931. That during the course of the trial of Haywood Patterson in April, 1931, he did not hear of a meeting of the Ku Klux Klan in the city of Decatur or in any City of Morgan County and that when informed by counsel for said Haywood Patterson that a rumor that such a meeting was held, he immediately conducted an investigation and was unable to find a single person of Decatur or Morgan County who attended such a meeting or who had heard of such a meeting. Affiant also states that he did not see or hear of any fiery crosses being burned during the progress of the trial held in April, 1933. That he was never called upon to halt any march of an organized mob during the said April trial. Affiant further states that in his official capacity as sheriff of Morgan County he comes in contact with people throughout the entire county and he is of the opinion that the defendant Haywood Patterson, and those jointly indicted with him, can secure a fair and impartial trial in the City of Decatur, Morgan County, Alabama.

(Signed) A. W. DAVIS.

Sworn and subscribed to before me
this the 21st day of November, 1933.

MARY E. GARGUS MEADOWS,
Notary Public,
Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Ruby A. Jones, a notary public in and for said state and county personally appeared Mrs. Fred S. Robinson (Allie Mae) who being duly sworn deposes and says that she is a resident of Morgan County, Alabama, and resides on Route 2, Decatur, Alabama, on what is

known as the Somerville Road; that she is acquainted with the people living on route two and that she is the only Mrs. Fred Robinson living on Route 2. She further states that she has never made any statement to any one to the effect that the "Scottsboro boys" or the "Scottsboro niggers" could not get a fair and impartial trial in Morgan County, Alabama, nor has she ever expressed a desire that they be dealt with in any other manner than through legal chanels. Affiant specifically denies having made the statement attributed to her by the affidavits introduced by the defendants in support of their motion for a change of venue. She further states that in her opinion the defendants will be accorded a fair and impartial trial.

(Signed) MRS. FRED S. ROBINSON.

Sworn to and subscribed before me
this the 20th day of November, 1933.

RUBY S. JONES,
Notary Public,
Morgan County,
Alabama.

Mr. Knight: We have, and expect to get them here almost immediately numerous other affidavits of the same import. At this point, I am going to ask the court to do this: It is perfectly apparent that affiants John Williams and Victor Elwood have committed perjury, and I am going to ask your honor to issue at the present time, a bench warrant for John Williams and Victor Elwood, for perjury, and I shall ask the same thing for the other two affiants if it appears that they have committed perjury.

Mr. Brodsky: We want to except—

The Court: You have nothing to except to yet. I am going to overrule his motion, so that you can't be hurt.

Mr. Brodsky: The pertinent thing about this, this matter should have been asked for in private; the fact that the Attorney General has accused witnesses for the defendant of committing perjury, and has made a motion to have a bench warant for their arrest, will go out over the county—

The Court: Yes sir, and I imagine that it will also go out over the county that I have overruled his motion. I have no jrisdiction over these parties; these affidavits seem to have been made outside of this county, and outside of this circuit, and I have declined the motion and overruled it. I wouldn't grant it if they lived here. That is a matter for grand jury investigation.

THEREUPON, the state introduced in evidence the following affidavits:

State of Alabama,
Morgan County, } ss.:

Before me, the undersigned authority in and for said county in said state personally appeared Wade Wright who being by me first duly sworn deposes and says that he is Solicitor of the 8th Judicial Circuit of Alabama; that he was present before the grand jury of Morgan County at the October Term of Court; that he then and there investigated the alleged killing of James Royal before said Grand Jury; that there were two colored persons who were brought before the said Grand Jury who reside immediately near the scene of the killing who claimed to have seen the killing and saw the deceased and his two assailants just immediately before the killing, to which, together with other details they testified before said Grand Jury; that thereafter on the 7th day of October, 1933, the Grand Jury returned into the circuit of this county an indictment against two colored men who the said two witnesses claimed and testified did the killing, charging them with the murder of James Royal;

that the said two parties named in the indictment have fled from Decatur and have not been arrested.

(Signed) WADE WRIGHT,
Affiant.

Subscribed and sworn to before me
this the 21st day of November, 1933.

MARY E. GARGUS MEADOWS,
Notary Public,
Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said state and county, personally appeared John D. Wyker, who being duly sworn deposes and says that to the best of his knowledge he has never made any statement to one John Williams in regard to the so-called Scottsboro cases, but if the cases were discussed with Mr. Williams or with any one else, he expressed the opinion that the defendants should be accorded a fair and impartial trial. That he has discussed the cases with certain persons, but has always expressed the opinion that the defendants should be accorded a fair and impartial trial and that in his opinion such a trial would be given the defendant or defendants in Morgan County, Alabama.

(Signed) JOHN D. WYKER,
Affiant.

Sworn and subscribed to before me
this the 21st day of November, 1933.

OTTO MOEBES,
Notary Public.

State of Alabama, }
Morgan County, } ss.:

Before me, John W. Wyker, duly sworn, deposes and says that he is the President of the Brown Funeral Company, an Undertaking Establishment doing business in the City of Decatur, Alabama, and that their records show the deaths and interment of the following, on the following dates:

C. E. Meinhart, died on Dec. 24th, 1932.
A. M. Cottrell, died on April 15th, 1933.
J. W. Frahn, died on March 7th, 1930.

(Signed) JNO. W. WYKER.

Sworn to and subscribed before me
this the 21st day of November, 1933.
Otto Moebes,
Notary Public.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a notary public in and for said state and county personally appeared E. M. Lee, who being duly sworn deposes and says that to the best of his knowledge he has never made any statement to one Victor Elwood in regard to the so-called Scottsboro cases, but if the cases were discussed with Mr. Elwood or with any one else, he expressed the opinion that the defendants should be accorded a fair and impartial trial. That he has discussed the cases with certain persons, but has always expressed the opinion that the defendants should be accorded a fair and impartial trial and that in his opinion such a trial would be given the defendant or defendants in Morgan County, Alabama.

(Signed) E. M. LEE,
Affiant.

Sworn and subscribed to before me
this the 21st day of November, 1933.

Otto Moebes,
Notary Public.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a notary public in and for said state and county, personally appeared A. L. Jolly, who being duly sworn, deposes and says that to the best of his knowledge he has never made any statement to one John Williams in regard to the so-called Scottsboro cases, but if the cases were discussed with Mr. Williams or with any one else, he expressed the opinion that the defendants should be accorded a fair and impartial trial. That he has discussed the cases with certain persons, but has always expressed the opinion that the defendants should be accorded a fair and impartial trial and that in his opinion such a trial would be given the defendant or defendants in Morgan County, Alabama.

(Signed) A. L. JOLLY.

Sworn and subscribed to before me
this 21st day of November, 1933.

OTTO MOEBES,
Notary Public.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public, in and for said state and county, personally appeared G. H. Smith, who being duly sworn deposes and says that to the best of his knowledge and belief he has never made any statement to one John Williams in regard to the so-called Scottsboro cases, but if the cases were discussed with Mr. Williams or with any one else, he expressed the opinion that the defendants should be accorded a fair and impartial trial. That he has discussed the cases with certain persons, but has always expressed the opin-

ion that the defendants should be accorded a fair and impartial trial and that in his opinion such a trial would be given the defendant or defendants in Morgan County, Alabama.

(Signed) G. H. SMITH,
Affiant.

Sworn and subscribed to before me
this the 21st day of November, 1933.

OTTO MOEBES,
Notary Public.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said state and county, personally appeared W. G. Roberts, who being duly sworn deposes and says that to the best of his knowledge he has never made any statement to one Victor Elwood in regard to the so-called Scottsboro cases, but if the cases, but if the cases were discussed with Mr. Elwood or with any one else, he expressed the opinion that the defendants should be accorded a fair and impartial trial. That he has discussed the cases with certain persons, but has always expressed the opinion that the defendants should be accorded a fair and impartial trial and that in his opinion such a trial would be given the defendant or defendants in Morgan County, Alabama.

(Signed) W. G. ROBERTS,
Affiant.

Sworn and subscribed to before me
this the 21st day of November, 1933.

OTTO MOEBES,
Notary Public.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said state and county, personally appeared E. L. Perryman, who being duly sworn deposes and says that to the best of his knowledge he has never made any statement to one John Williams in regard to the so-called Scottsboro cases, but if the cases were discussed with Mr. Williams, or with any one else, he expressed the opinion that the defendants should be accorded a fair and impartial trial. That he has discussed the cases with certain persons, but has always expressed the opinion that the defendants should be accorded a fair and impartial trial and that in his opinion such a trial would be given the defendant or defendants in Morgan County, Alabama.

(Signed) E. L. PERRYMAN,
Affiant.

Sworn and subscribed to before me
this the 21st day of November, 1933.

OTTO MOEBES,
Notary Public.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said state and county, personally appeared E. S. Morrow, who being duly sworn deposes and says that to the best of his knowledge he has never made any statement to one John Williams in regard to the so-called Scottsboro cases, but if the cases were discussed with Mr. Williams or any one else, he expressed the opinion that the defendants should be accorded a fair and impartial trial. That he has discussed the cases with certain persons, but has always expressed the opinion that the defendants should be accorded a fair and impartial trial

and that in his opinion such a trial would be given the defendant or defendants in Morgan County, Alabama.

(Signed) E. S. MORROW,
Affiant.

Sworn and subscribed to before me
this the 21st day of November, 1933.

OTTO MOEBES,
Notary Public.

State of Alabama,
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said state and county, personally appeared Lawrence B. Frahn, who being duly sworn deposes and says that to the best of his knowledge he has never made any statement to one John Williams in regard to the so-called Scottsboro cases, but if the cases were discussed with Mr. Williams or with any one else, he expressed the opinion that the defendant should be accorded a fair and impartial trial. That he has discussed the cases with certain persons, but has always expressed the opinion that the defendants should be accorded a fair and impartial trial and that in his opinion such a trial would be given the defendant or defendants in Morgan County, Alabama.

(Signed) LAWRENCE B. FRAHN.

Sworn and subscribed to before me
this the 21st day of November, 1933.

OTTO MOEBES,
Notary Public.

W. V. DAVIDSON, sworn in behalf of the State, testified:

Direct Examination:

I am Mr. W. V. Davidson. I live in the east part of what was known as New Decatur, now the east part of Decatur, on East Grant Street. I know Mr. A. C. Joiner. He was my neighbor. I sold him his home, and he lived two blocks from me on what is known as 12th Avenue; three blocks off Grant Street. He is dead. I attended his funeral. To the best of my recollection he died two or three years ago; I don't remember the exact date. I have lived in Decatur, New Decatur, then Albany, and now Decatur, thirty-five years and upwards. I have filled official positions during that time. I was chief of police over two terms, and was in the police service twelve years; a member of the city council, chairman of the jury commission for a number of years, and several other offices or positions.

Throughout that time, at any time, there has not been any man in this town, or Albany, or New Decatur, that I know of, by the name of A. C. Joiner, other than the one you spoke of.

Cross Examination:

I know J. B. Joiner; his son is Vernon. He is a son of A. C. Joiner. I have heard many people speak about this case during the last six months. I have been in this county thirty-five years, I don't exactly remember how many,—that many anyhow. You might term me one of the old settlers. I believe they can get as fair a trial here as anywhere in this country. Naturally I have heard a good many people talk about it and I have discussed it some myself. I might further say, if I am allowed to say it, it is this, I don't believe there ever has been a time that their lives have been in jeopardy from mob violence. I draw my conclusions from having

talked to the people in Morgan County. I haven't heard any threats. As to the outside and joining counties, I am pretty well acquainted outside of this county. I haven't seen a great many people from the surrounding territory. Comparatively few people from outside the county were here at the other trial.

I don't know the distance exactly from Decatur to Scottsboro. I would say that it is in the neighborhood of sixty miles, from sixty to eighty miles.

J. Q. SEWELL, sworn in behalf of the State, testified:

Direct Examination:

My name is J. Q. Sewell. I live at 508 4th Avenue West, Decatur, Alabama. I have lived there about two years. I have lived in Morgan County all my life.

I do not know a G. O. Sewell, that lives at 508 Fourth Avenue West, man or woman.

I am fairly familiar with the people of Morgan County. In my business dealings I come in contact with the people of Morgan County. From the conversations I have had with the people of Morgan County, it is my opinion that these defendants can have a fair and impartial trial in this county. I don't see why a jury of this county shouldn't base their verdict on the evidence and the evidence alone.

Cross Examination:

My name is J. Q. Sewell. The name I was asked about was G. O. Sewell. The difference was in the initials.

Re-direct Examination:

I do not know of ever having any talk with one John Williams or with Mr. Elwood. I never made that state-

ment to either of these gentlemen or any one that I know of, that the so-called Scottsboro negroes should be strung to a tree, should be killed, or taken out and done away with. I want to see them get a fair and impartial trial in Morgan County, Alabama.

Re-cross Examination:

I have been at home regularly in the last few months.

Re-direct Examination:

I do not work regular. I do not stay at home all during the day. I am out trying to find work. What I meant was I haven't been out of town.

T. F. ROBERTS, sworn for the State, testified:

Direct Examination:

My name is T. F. Roberts. I live at 304 Fifth Avenue West. I have lived at that address, I think, about sixteen years. I reckon I have lived in Morgan County 30 or 35 years. I am a railroad man, but I haven't any work right now. I never made a statement to one John Williams that these Scottsboro defendants should be hung by their necks, strung from a tree, killed, or taken out and done away with. If I ever made that statement to any one I don't remember anything of the kind.

I am fairly familiar with the people of Morgan County. In my opinion I think the defendants in the Scottsboro cases can get a fair and impartial trial. My own desire is that they do get a fair and impartial trial.

Cross Examination:

I don't remember making such a statement. I don't think I ever made a statement like that at all.

H. C. KITCHENS, sworn for the State, testified:

Direct Examination:

My name is H. C. Kitchens. I live at 319 Fifth Avenue, West. I never made a statement to Mr. John Williams, or to any one else, to the effect that the Scottsboro defendants should be hung by their necks, strung from a tree, kille[illegible] or taken out and done away with. I have lived at my present address four years. I have lived in Morgan County all my life. I know a great number of people in Morgan County. In my opinion the Scottsboro defendants can get a fair and impartial trial in Morgan County, Alabama. That is my own desire. I worked for the railroad company until they laid us off. I am not doing anything at the present time. I am a carpenter.

Cross Examination:

I have no telephone at my home. I am at home every night. I am not there all during the daytime. I have heard these Scottsboro cases discussed. I never heard anybody say that thirty cents worth of rope would end it. I never heard any resentment about the expense occasioned to the county on account of these trials. I never heard any one say anything which might mean, in my opinion, that these defendants could not get a fair and impartial trial under the law, or that might be interpreted by me to mean that these defendants could not get a fair and impartial trial. I never heard any unfavorable comments about these defendants. I don't know that I ever heard any expressions of opinion that they were innocent, or whether or not they might be innocent.

J. H. STONE, sworn for the State, testified:

Direct Examination:

My name is J. H. Stone. I live in Decatur, Route 2, Flint. I have lived there since January 5th of this year.

I have lived in Morgan County since '98. I don't know Victor Elwood. I did not, that I know of, make a statement to him or any one to the effect that there wasn't twelve men in Morgan County that would let the Scottsboro defendants go free. I am fairly familiar with the people of Morgan County, and have been for thirty-five years. I know a large number of people in the county. I certainly think that the Scottsboro defendants can get a fair and impartial trial in this county. It is my own opinion that they can be given a fair and impartial trial. I have never expressed the opinion to any one that they be mobbed, taken out and hung by the neck, killed, or anything like that.

Cross Examination:

I never heard anybody else express that opinion that I can recall. I don't believe I did make such a statement and not remember it. I never heard anybody in Morgan County say that short shrift should be made of these defendants. I may have heard some one say that if the evidence showed that they were gulity they should hang. I have not heard any expressions of opinion since the last trial. I never heard anybody discuss this case. The only thing I heard anybody discuss was the statement this lawyer made in New York about the jury. I have read about it and I have heard that discussed. I don't believe I have ever heard any other feature of this case discussed. I never remember discussing any other matter or feature or any other connection with this case, at any place, any time, anything other than the statement of Mr. Leibowitz in New York.

Re-direct Examination:

I did hear that statement of Mr. Leibowitz discussed. I don't believe that any man sitting on the jury would give them anything else but a fair and impartial trial, notwithstanding anything that happened before.

MRS. MARY LEONARD, sworn on behalf of defense, testified:

Direct Examination:

I live in Birmingham. I have been in Decatur since this last Sunday noon. I came up here to see a lady friend of mine. I came at the request of Mr. Schriftman of New York, I believe it was. I became acquainted with Mr. Schriftman through a girl friend of mine I knew there. She told him to come to see me in Birmingham. She gave him my address in Birmingham.

She wrote me a letter, telling me about him, and he came to see me.

I had a friend in Decatur that I came to see. I came down here Sunday at noon. Mr. Schriftman asked me to tell him what people had to say, and I told him I would be glad to do so; he said he wanted to know what it was, no matter whether it was one way or the other, that he would like to know. When I got here I took a taxicab and I asked the man driving the taxicab if they wasn't going to have the Scottsboro cases the next Monday, and he said Monday. I asked him what he thought they ought to do with that case, and he said "If they don't do something pretty soon all of them would have whiskers", and I asked him "Well, what do you think they ought to do with the negroes?" and he said, "I think they ought to take the negroes and the lawyers and the girls all out—" and I think he said "and shot"—I wrote it down, I can't remember everything and I put it down. After I got to my friend's house I tried to remember what he said. Listen, he said, "Leibowitz better not come back here"—that is what he said "or they will all be hung together" and "or Ruby Bates either". His wife said the same thing. She was in the car with us, and he was driving. There was no hesitancy at all about what they said. They told me what they thought about it. I asked my friends when I got there,

Mr. Cagle and Mrs. Cagle, what they thought about it, Grady Cagle. Mr. Powell said "that he didn't see any use in having any trial at all; that he didn't believe in going through a lot of stuff like that; if they were guilty they ought to take them right out and shoot them. Mr. Jim Powell said that—refers to notes—there was a lot of talk about it,—I can't tell you all of it,—that they believed that all ought to be hung or killed or something, that they thought they were guilty. I was talking to a lady, a Mrs. Hass, a minute ago, that was out there, she said "the people here are hot about this;" that she was scared to go to the court room at the last trial; that she was afraid they would lynch them; that they would break in the jail and get them; that the people in Decatur was hot about this. I told her "I am going to tell them about this if they ask me" and she said "All right, tell them". She is sitting out there now. Oh, yes, and she said, "If they are turned loose they will be lynched".

Cross Examination:

My first name is Mary. I am married. My husband's name is Sam. His occupation is merchandise.

Q. With whom does he work?

Mr. Brodsky: We object to that. Overruled. Exception.

A. He is not employed at the present time.

I have lived in Birmingham nearly all my life. I became acquainted with Mr. (Schriftman)—the gentleman over there, through a friend of mine in New York. I had worked up there. I went to work in New York in January and worked until October, I think it was 1929—that is when I think it was. I don't know whether I heard anything about the Scottsboro cases in New York in 1929. I don't know whether there was any or not. I have been in Birmingham since 1929. My friend in New

York has been writing me all along, and she wrote me, that Mr. Schriftman, I believe his name is, was the man she was working for and that he was coming to Birmingham and would come to see me, and when he called to see me, I was glad to see him because she worked for him as stenographer. She did not make mention of the Scottsboro cases. I have been in Birmingham since I came back from New York.

I did not have any conversation with Mr. Jones, the present City Commissioner, relative to some communistic or red meetings. I never was had up by about my activities in that convention by the police. I never was arrested in my life. They have never called me in to interrogate me. Everybody in Birmingham knows Chief Melhuff. I do not know him personally. I do when I see him. Everybody knows Mr. Jones, the City Commissioner, but I do not know him personally. I did not appear before the City Commissioner of Birmingham in an attempt to get a permit to hold a red meeting or communistic meeting in Birmingham.

I do not know John Williams or Charley Williams or Victor Elwood. I know Jim Jones, President of the City Commission. No, sir, I don't know Jim Jones, a colored fellow.

Mr. and Mrs. Grady Cagle live at 1720 Ninth Avenue. I don't know the name of the taxi driver that drove me out there. I did ask if he was Mr. Sims and he said no, and his wife, who was sitting with him, said, "I am his daughter". I asked because I wanted to get them if I needed a taxi. He give me his card.—I have got it here, "Sims Taxi, Mrs. R. O. Sims" and I said "Lady, are you Mrs. Sims?" and she said "No, I am her daughter". They never did give me their names. I did not want specially to be sure and get their taxi. I did not expect to make an extensive investigation. I saw these people that were driving this cab, and these people I was visiting, four of them, there, and numerous other

people I have talked to around the courthouse here, like that lady out there.

Since I was here yesterday and today I have heard one or two people say that it didn't make any difference to them what they did to them. Mrs. Sims herself for instance, I called her cab and Mrs. Sims drove herself, and I asked her what she thought about it, and she said "It don't make much difference to me one way or the other." Mr. Cagle said that he would like to participate in lynching the negroes. I did not in so many words hear it. He said he believed something ought to be done with them. He said the negroes, lawyers, girls and all ought to be taken out of the court house and shot. I beg your pardon, Mr. Powell said that. Mr. Powell lives at 1720 Ninth Avenue East. Mr. Powell runs a wood-yard here. Mr. Cagle and he are partners. They live in the same house. Mr. Cagle did not meet Mr. Schriftman. I saw Mr. Schriftman in Birmingham once. I made my report to him as to what I found out yesterday afternoon about six o'clock down at the bus station. Yesterday was Monday, I came in on Sunday. I happened to see him 'cause I was fixing to take the bus to go home. I come in on this Sunday to see Mrs. Cagle. I am not a kin, just a friend. I didn't visit her often. I never visited her before. I never visited her at all at her home. I have been through Decatur. This was the only time I have ever visited in Decatur. That remark that the negroes, girls and lawyers ought to be taken out and shot, was made Sunday night. I had been here then about six hours. I got in about noon. I did not tell Mr. Powell that I knew Mr. Schriftman. I did not tell him that Mr. Schriftman had requested me to come here and make an investigation and tell him what I found. I happened to meet Mr. Schriftman at the bus station because I went down to catch the bus home. I saw Mr. Schriftman here yesterday, and he didn't say anything or talk with me, and I thought, well, I guess he is not interested in anything I have found out. He had asked me before I came to tell him anything I had found out;

he didn't pay much attention to me, and I decided I would go home.

I was in court all day yesterday. I felt like that if what I knew wasn't worth anything, it was all right. He came up to the bus. It was almost time for the bus to come in. I waited there about an hour, I guess. He came up and spoke to me and told me that he had a subpoena there for me. I didn't get out the pencil to make the memorandum while the people were talking. I didn't let them know that I was going to make these memorandums.

Q. You have never had any connection with any communistic or red activities in Birmingham?

Court: She has already said she didn't.

Q. Have you ever asked Mr. Jones of the City Commission or Chief Melhuff for a permit to have a meeting at any time?

Mr. Brodsky: We object to that because it has all ready been answered. Overruled. Exception.

Q. Did you ever ask Chief Melhuff, or Jones of the City Commission, to give you a permit, or did you participate with any one in appearing before them, either or both, for a permit for any meeting of any other association or organization of any kind? A. Yes, sir.

Q. Now, what was that organization? A. It was no organization at all. There was a lot of people out of work and we wanted to hold a meeting, and they asked some of us if we would go down and ask for permission to have it, and we went down with some other people and asked for permission to hold this meeting, and they said we could have the meeting.

Q. Who else was in that party?

Mr. Brodsky: We object. Sustained.

Q. You went down and asked for permission to have that meeting? A. Yes, sir.

Re direct Examination:

I think they could get twelve men here that would give them a fair trial,—my opinion about that is no.

Re cross Examination:

I have talked to more than nine people since I was in Decatur.

Defendants-petitioners rested.

THEREUPON the state introduced in evidence the following affidavits:

State of Alabama, }
Morgan County, } ss.:

Before me the undersigned authority in and for said county, personally appeared F. M. Hamilton who being by me first duly sworn deposes and says that he has been a resident of Morgan County practically all his life; that he is 64 years of age, and has lived in Decatur for the last 30 years; that during said time he has served as Justice of the Peace and as Judge of the Inferior Court of Decatur; that he has been in the mercantile business for several years, and has been a traveling salesman for about nine years; that he is acquainted with substantially the entire citizenship of this county; that he has heard many people discuss the Scottsboro cases, and in affiant's opinion, based upon his knowledge of the citizenship of this county, and what he has heard said, the defendant in this case as well as the other accused parties can get a fair and impartial trial.

(Signed) F. M. HAMILTON,
Affiant.

Subscribed and sworn to before
me this Nov. 21, 1933.

J. H. Green,
Circuit Clerk.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said state and county personally appeared J. A. Thornhill, who being duly sworn deposes and says that to the best of his knowledge he has never made any statement to one John Williams in regard to the so-called Scottsboro cases, but if the cases were discussed with Mr. Williams or any one else, he expressed the opinion that the defendants should be accorded a fair and impartial trial. That he has discussed the cases with certain persons, but has always expressed the opinion that the defendants should be accorded a fair and impartial trial and that in his opinion such a trial would be given the defendant or defendants in Morgan County, Alabama.

(Signed) J. A. THORNHILL,
Affiant.

Sworn and subscribed to before me
this the 21 day of Nov., 1933.

OTTO MOEBES,
Notary Public.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said state and county, personally appeared A. F. Harris, who being duly sworn, deposes and says that to the best of his knowledge he has never made any statement to one John Williams in regard to the so-called Scottsboro cases, but if the cases were discussed with Mr. Williams or any one else, he expressed the opinion that the defendants should be accorded a fair and impartial trial. That he has discussed the cases with certain persons, but has always expressed the opinion that the defendants should be accorded a fair and impartial trial and that in

his opinion such a trial would be given the defendant or defendants in Morgan County, Alabama.

(Signed) A. F. HARRIS,
Affiant.

Sworn and subscribed to before me
this 21 day of Nov., 1933,

OTTO MOEBES,
Notary Public.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said state and county, personally appeared S. B. Cross, who being duly sworn deposes and says that to the best of his knowledge and belief he has never made any statement to one Victor Elwood in regard to the so-called Scottsboro cases, but if the cases were discussed with Mr. Elwood or with any one else, he expressed the opinion that the defendants should be accorded a fair and impartial trial. That he has discussed the cases with certain persons, but has always expressed the opinion that the defendants should be accorded a fair and impartial trial, and that in his opinion such a trial would be given the defendant or defendants in Morgan County, Alabama.

(Signed) S. B. CROSS.

Sworn and subscribed to before me
this 21 day of Nov., 1933.

OTTO MOEBES,
Notary Public.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said county and state, this day appeared H. M. Priest, who after being duly sworn deposes and says that he

is the sole owner of Priest Funeral Home, Decatur, Alabama, and that one Fred J. Patterson, who formerly lived at 707 Second Avenue, West, Decatur, Ala., died on March 9th, 1933, and that he was the official undertaker.

(Signed) H. M. PRIEST,
Affiant.

Subscribed and sworn to before me
this the 21st day of Nov., 1933.

OTTO MORRIS,
Notary Public.

MRS. GRADY CAGLE, sworn on behalf of the state, testified:

Direct Examination:

I am Mrs. Grady Cagle. I live in Decatur. I don't know Mrs. Mary Leonard. I just seen her Sunday afternoon. Sunday night she spent at my house. She come to my house Sunday afternoon; she knocked on the door and I went to the door, and says "How is that"? and she says, "Well, I am related to you, I am your husband's cousin". I asked her to come in and have off her hat and she did. She said she would like to spend the night with us, as she wanted to be here tomorrow for the Scottsboro trial, and we told her all right. After supper we was all sitting around the fire, and she said "What do you think about the Scottsboro cases" and I said, for one, "I don't know anything about the Scottsboro trial; I don't even know one of the girls or one of the men." The men folks was sitting there listening to our conversation, and she asked them "What do you think ought to be done with these Scottsboro cases" and they all said "We don't know; that the court would be the one to say." She said that she was here to do everything in her power to get the trial moved from here to Birmingham; that she was satisfied they wouldn't

have a fair trial here. I was with Mrs. Leonard and Mr. Powell all the time they were together. While I was with them Mr. Powell did not make the statement to Mrs. Leonard that they ought to take all of them, the defendants and the women, out and shot, nor anything of that import. She said she doubted if they could get a fair and impartial trial. I had never seen her before she came to my house.

Cross Examination:

She told me she was my cousin. She said she was related to my husband, not to me but to my husband. She and my husband did not talk about how they came to be related. She didn't say anything more to him about it. She did say she knew his sister in Birmingham. That she was acquainted with her. His sister didn't have any children. She was married. She said she hadn't met his sister's husband. There was quite a conversation between my husband and Mrs. Leonard about the sister.

State and defendant both closed.

The court denied the motion in an opinion as follows:

Court's Opinion.

Gentlemen, the application for a change of venue in this case is very lengthy, covering 34 closely typewritten pages. It is somewhat embellished with well rounded sentences, but after you read it to the last analysis, it undertakes to set forth, as the law authorizes, that the defendants in this case cannot have a fair and impartial trial in this county. Under our law, when that is shown to the court from the evidence on the hearing to his reasonable satisfaction it becomes the duty of the court to grant a change of venue. That is the sole question in the case, unless I should determine that the defendants

are entitled to a change of venue. If I should do that, then the next question would be, to what county would the case be transferred. There is no need, as yet, to give consideration to this last proposition, unless I am of the opinion from the evidence that the first proposition is established. Without meaning to be critical, the application is seriously burdened with immaterial statements, and some in exceedingly vigorous language, and a great many of these statements there has been apparently no effort to substantiate except by the bare and bald sworn statement of the defendants in the case. That application sworn to in that manner is entitled to due and fair consideration. At the same time, it becomes my duty to consider the surroundings under which that application was made, or that sworn statement was made by the defendants. There are volumes of allegations set forth in that application and sworn to, that it was impossible for the defendants to know. I can't shut my eyes to that. The burden is on the applicants to set forth and prove the specific acts and declarations on which they base their application for a change of venue. That has been undertaken in this case. There are several affidavits. There are four affidavits by one affiant, Elwood; there are two affidavits by Williams and two affidavits by Jim Jones, and while the other affidavits are important, legally, the chief effort, as I see it, to show the right to a change of venue, so far as the applicants are concerned, must rest on the sworn application, sworn to by the defendants, and the affidavits made by Elwood, Williams and Jones. I have listened to every line of that testimony, and have personally examined each of the affidavits in the testimony. The affidavits of these parties, confessedly strangers here, show an interview with a great many people apparently, and have undertaken to recite in the affidavits what the different parties said, and on what they said, they base their affidavits that there cannot be a fair and impartial trial. Now, as I see the evidence on that, as exhibited by their affidavits, their opinions are based on unsubstantial and

illegal statements. Now the expressions that the parties made, and they seem to have it down, one would say he did not care much about it, but didn't think they could get a fair trial. That is no statement of a fact. No statement by that witness as to why he considered that they could not get a fair trial. These statements, as I say, much of these statements, do not meet the requirements of the law; that is, before an affiant can make a valid, legal affidavit on the subject, he must recite specifically and substantially the facts on which he bases such opinion; otherwise it is of little value; that criticism is also applicable to some of the affidavits from the state, to which, from a legal standpoint, I cannot give any particular legal consideration. There is in the law and the very nature of the case, some conditions in the affidavit for a change of venue, and the ones offered by the state in rebuttal, which must be met. In the very nature of things the rebutting affidavits are based, and must be largely so, on the affiant's knowledge of the people in his community, together with a lack of having heard anything said about it, for instance, all said what he heard, and on that based his opinion. Referring again to the affidavits of Elwood, Williams and Jones, there is evidence in the case, aside from their confessedly legal weakness, evidence undisputed, that shows, or tends to show that the names of some of these parties alleged by the affiant to have been interviewed, and the language they used, were such people as had long since been dead. While the fact that only comparatively a few have been shown to be dead, at the same time, the very fact that they have quoted one of these men that are shown to be dead, strikes at the very vitals of the credence to be given to such an affidavit. It does not necessarily follow that error in some few instances would cast a shadow of doubt on all of the contents of the affidavits; certainly not, if that error was of such a type from which one could reasonably conclude that it was mere error, but when it is shown to the court that it is more than a mere error, then its weakness becomes serious and vital, in my judgment. Now, that is the applicants' side of

the case, as I view it, when you strike out all that is included in the affidavits that is illegal; that does not meet the requirements of the law as to the specific facts on which the opinion is based, if the evidence should stop there, in my judgment, it would be very unsatisfactory. But it doesn't stop there. The state has offered a great number of affidavits; there are so many I can't detail the instances of those I do not consider in legal form. In my judgment there are some there that do not meet and conform to the requirements of the law. But aside from this, the affidavits offered and so far as I am able to see from the evidence in the case entitled to consideration, the state has met overwhelmingly the proof that has been offered by the defendants on this motion. These affidavits are similar, which, ordinarily, is not altogether to be desired. However, the rebuttal is necessarily of such a type that much of it must be the same. They do show the location of the affiants; they show their business; they show their acquaintance in that territory; they give evidence of where they live; the length of time they have been there; the opportunity of forming an opinion of the facts that they state, so I do not feel justified in overriding the voluminous amount of testimony. Now, in the application much is said about troops and the necessity for having troops at Scottsboro, and the necessity for having troops at Decatur. While the trial in Scottsboro in the spring of 1931, I believe at a point I reckon would be within my judicial knowledge, at least 75 miles from this place,—and mark you, the material thing about a change of venue is that it must appear that the defendants cannot get a fair and impartial trial at the time and place of the application. Of course I do not mean to be understood as saying that facts and circumstances occurring months and years ago are not to be considered as evidence on a hearing at this time. To go on, there is not any evidence before me that there was any necessity for troops at Scottsboro, other than the mere fact that they were there. I would be justified in presuming that they were there on the request of the presiding judge.

That being true, I would accept that as an explanation as to why they were there, and also as to the necessity of their being there. It is recited that a change of venue was granted in Jackson County to this county. Of course I know that, or it wouldn't be here. I have no evidence before me as to the necessity for that change or the reason of it, other than the fact that it was granted by one having authority to grant it, and I assume that he acted with propriety and legality. But these things are now come at a different place altogether. It is not shown that any feeling against these defendants that may have developed and existed at Scottsboro has come down to this point. I have no evidence on this point, as I recall it. There is nothing here that shows any connection between these two counties, and of course I judicially know that they are not joined, and that they are a long ways apart. As to troops, I cannot be blind to the present surroundings. I have a right to take that into consideration, and I cannot see anything here now, or anything that has happened since this trial started that would suggest to me in the remotest degree that there is any occasion for troops here. It is alleged that there was a fiery cross here. That might, in some degree, be likely, but there is no evidence absolutely in this case, other than the bald allegation sworn to in the petition, of its existence. On the contrary, the sheriff of the county, who lives here, and we all judicially know this is the county seat of the county; the jail is located here, and his residence is here, and he makes affidavit that there was no complaint, and that he made an investigation and never heard of any such thing. Still there is a good deal said in there about the danger of mobs. Well, as I say, that was made by the defendants who made it at a time when they were confined in the jail in Birmingham, Jefferson county. Of course, I know they have been in jail since they were originally arrested. In the very nature of things they cannot know anything about whether there was a threatened mob here or not. That is in the nature of impossible evidence. The same is true as to the allegations of the petition as

to threatened mobs on the former trial. I have no evidence of that before me, other than what is set forth in the application. The judgment of the judge that tried the case is set forth and referred to here. I don't know what he had before him that caused him to reach that conclusion. I assume that he had sufficient evidence before him to warrant him in making the decision. I have no criticism to make of that decision, but there is nothing before me to show that that feeling, if there was any, has come down to the present date. On the other hand overwhelming conclusions are drawn from the counter affidavits, impels me to the conclusion that no such condition now exists. Some reference has been made to the Community Builder which was an unwise editorial, and unjustifiable, probably. I have no evidence before me that a copy of that paper has ever come into this county; I do not feel justified in supposing that it did, other than the reference to it in the application itself. Well, I reckon that's about enough. It is suggested that it would make everybody happy if the case could be transferred to Birmingham. If the evidence warranted it, nothing would make me so happy as to transfer it, but I have to go on the evidence, and evidence offered in a legal way on the trial, and from this evidence, I am impelled to overrule the motion for change of venue.

Defendant's counsel excepted to the court's ruling denying the motion for change of venue on behalf of all the defendants.

MOTION TO QUASH TRIAL VENIRE.

DEFENDANT, ON NOVEMBER 21, 1933, MOVED TO QUASH THE VENIRE WHICH WAS DRAWN IN THIS CASE ON NOVEMBER 20TH. THE SAID MOTION IS IN WORDS AND FIGURES AS FOLLOWS:

(Caption)

Your petitioner, who is the defendant above named, by his attorneys, moves the Court to quash the venire

of Petit Jurors which was tendered to and served on him and from which said venire it is now proposed to draw the Petit Jury which is to try him on the indictment and indictments in the above entitled Cause, and avers as follows:

1. Your petitioner was heretofore indicted by the Grand Jury of Jackson County on or about March 31, 1931, by individual indictment and by joint indictment, together with eight other defendants, charged with the crime of rape upon a white woman. Thereafter, in April, 1931, your petitioner was tried in the Circuit Court of Jackson County and was found guilty and sentenced to be executed.

2. Thereafter an appeal was taken from said judgment of conviction and sentence of death to the Supreme Court of the State of Alabama and said conviction was affirmed.

3. Thereafter an appeal was taken in the order of affirmance to the Supreme Court of the United States and the judgment of conviction was reversed and a new trial ordered.

4. Thereafter your petitioner and the other defendants indicted together with him moved in the Circuit Court of Jackson County for a change of venue and the case of all the defendants was transferred to the Circuit Court of Morgan County for retrial.

5. Thereafter your petitioner was tried in the Circuit Court of Morgan County and was convicted and sentenced to death. Thereafter your petitioner, by his attorneys, moved for a new trial before the Honorable James E. Horton, the Judge who presided at the trial and said motion was granted and the judgment of conviction and sentence of death set aside. Your petitioner is now

facing trial for the third time on the original indictment found against him.

6. Your petitioner has heretofore pleaded in abatement and moved to quash the indictment and indictments found against him on the ground that Negroes were excluded from the roll of Grand Jurors and from the Grand Jury which found the indictments against him, and have been systematically excluded from service on Grand Juries in Jackson County, as is more fully set forth in said motion and the affidavits attached thereto and the hearings had thereon.

7. Your petitioner is a Negro of the African race.

8. The venire of Petit Jurors from which is, or is to be drawn the Jurors who are to try your defendant on the indictment aforesaid, is void and was drawn and selected in a manner and by methods contrary to law, in that persons of the Negro race, duly qualified under the laws of the State of Alabama to serve as members of the Petit Jury that is about to try your defendant, were excluded from the roll of Petit Jurors of Morgan County from which was drawn the venire of jurors from among whom will be chosen the Petit Jurors who will try your defendant. That all qualified Negro citizens of Morgan County were excluded from the aforesaid roll and panel solely by reason of their race and color, as will appear more particularly hereinafter.

9. That in the year 1932 or 1933, the duly constituted authorities of Morgan County prepared a Jury Roll of male citizens of Morgan County, from which roll the venire and finally the Petit Jury which is to try your petitioner was selected. That said roll above referred to consisted

wholly of white persons and contained the name of no Negro citizen of Morgan County, qualified by law to serve on juries, solely by reason of the fact that all qualified Negroes were arbitrarily excluded from said roll and have been arbitrarily and systematically excluded for many years from the rolls of Petit Jurors, by the authorities designated by law to prepare said roll, solely because of their race and color.

10. Consequently, the venire served in this case, which was selected from the aforesaid roll and the Petit Jury which is or is about to be drawn, contains the name of no Negro citizen qualified by law to serve on aforesaid jury.

11. That at the time when the aforesaid Jury Roll was prepared and the aforesaid venire and jury were drawn there were approximately 46,000 persons residing in Morgan County, of whom approximately 38,000 were white and approximately 8,500 were Negro.

12. That at the time when the aforesaid Jury Roll was prepared and the aforesaid venire and jury were drawn there were approximately 23,000 male citizens of Morgan County, of whom approximately 19,000 were white and approximately 4,250 were Negro.

13. That at the time when the aforesaid Jury Roll was prepared and the aforesaid venire and jury were drawn there were approximately 11,000 male citizens of Morgan County over the age of twenty-one and under the age of sixty-five years who were qualified, under the laws of the State of Alabama, to serve as Petit Jurors in Morgan County. That of this number approximately 9,000 were white and approximately 2,000 were Negro.

14. That at the time when the aforesaid Jury Roll was prepared and the aforesaid venire and Jury were drawn there were approximately 2,000 Negro citizens of Morgan County who were duly qualified to serve as Petit Jurors, and to be enrolled on the aforesaid Jury Roll, and who were and are eligible for such enrollment, and who possess

all of the requirements set forth in the laws of the State of Alabama for service as jurors.

15. That the Code of the State of Albama (1923) Section 8603, relating to qualifications of jurors provides as follows:

> *"Qualifications of persons placed on jury roll and in jury box*—The jury commission shall place on the jury roll and in the jury box the names of all male citizens of the county who are generally reputed to be honest and intelligent men, and are esteemed in the community for their integrity, good character and sound judgment, but no person may be selected who is under twenty-one or over sixty-five years of age, or, who, being afflicted with a permanent disease or physical weakness is unfit to discharge the duties of a juror, or who cannot read English, or who has ever been convicted of any offense involving moral turpitude. If a person cannot read English and has all the other qualifications prescribed herein and is a free holder or householder, his name may be placed on the jury roll and in the jury box."

It is further provided in Section 8606 of the aforesaid Code as follows:

> *"Jury Commission must place name of every qualified person on the jury roll* * * * The jury commission shall see that the name of every person possessing the qualifications prescribed by this chapter to serve as a juror shall be placed on the jury roll and in the jury box."

16. That at the time when the aforesaid Jury Roll was prepared and the aforesaid venire and jury were drawn there were approximately 2,000 Negro citizens in Morgan County, who were male citizens over the age of twenty-one years and under the age of sixty-five years, and who were generally reputed to be honest and intelligent men, and

who were esteemed in the community for their integrity, good character and sound judgment and who were not afflicted with a permanent disease or physical weakness rendering them unfit to discharge the duties of jurors, and who had never been convicted of any offense involving moral turpitude. That of this number there may have been some who could not read English, but who, notwithstanding, possessed all the other aforesaid qualifications and were freeholders or householders of Morgan County.

17. That members of the Negro race duly qualified by the laws of the State of Alabama to serve on Grand and Petit Juries in the State of Alabama and in Morgan County, have been and are systematically, arbitrarily and in violation of law excluded from the jury roll and from serving as jurors, as aforesaid, solely because they are members of the Negro race, that is, by reason of their race and color.

18. That for the last twenty-five years or more the duly constituted authorities of Morgan County having charge of the preparation of the Grand and Petit Jury rolls and the selection of panels of Grand Juries and Petit Juries in Morgan County and of Grand Juries and Petit Juries in Morgan County, and generally of the laws and regulations pertaining to jury service in Morgan County, have systematically, arbitrarily and invariably refused, neglected and omitted to place the names of Negro citizens of Morgan County on aforesaid jury lists, although the said Negro citizens were and are qualified under the laws of the State of Alabama to serve as such jurors and Grand jurors; and said refusal, neglect, omission and exclusion were due solely to the race and color of the aforesaid qualified Negro citizens.

19. Upon information and belief, no Negro has served on any Grand Jury or Petit Jury in Morgan County for more than twenty-five years.

20. That the arbitrary refusal, omission and neglect to place the names of qualified Negroes on said roll and rolls, as hereinabove more fully set forth, were and are to the detriment, prejudice and damage of the defendant and in violation of the Constitution and Laws of the State of Alabama, and his rights thereunder.

21. That the arbitrary refusal, omission and neglect to place the names of qualified Negroes on said roll and rolls, as hereinabove more fully set forth, were and are to the detriment, prejudice and damage of the defendant and in violation of the Laws and Constitution of the United States and the Amendments thereto, and his rights thereunder.

NOTICE is hereby given that the defendant will ask leave of the Court to submit further testimony, both oral and written, in support of the allegations herein contained that may be controverted by the State of Alabama.

WHEREFORE your petitioner prays for an order quashing the jury panel or jury venire served on him as aforesaid and for such other and further relief that may be just and proper in the premises, for all of which no previous application has been made.

Nov. 20, 1933.

(Signed) HAYWOOD PATTERSON,
Defendant,
By G. W. CHAMLEE, Att'y.

G. W. CHAMLEE,
S. S. LEIBOWITZ,
J. R. ROSSKY,
Attorneys.

STATE OF ALABAMA,
COUNTY OF JEFFERSON, } ss.:

HAYWOOD PATTERSON, the defendant and petitioner herein, makes oath that the facts as stated in the foregoing petition and motion to quash are true to the best of his knowledge and belief.

HAYWOOD PATTERSON.

Subscribed and sworn to before me
this 19th day of November, 1933.

F. L. EAVIN,
(Seal) Notary Public.

I hereby certify that I served a copy of this motion to quash the trial panel of jurors in this case as this day served on defendant Haywood Patterson. Nov. 20, 1933.

G. W. CHAMLEE.

EXHIBIT A.

IN THE

CIRCUIT COURT OF MORGAN COUNTY, ALABAMA.

STATE OF ALABAMA against HAYWOOD PATTERSON, Defendant.	No.

ROBERT JAMES makes oath in due form of law that he resides at 311½ W. 20th Street, Chattanooga, Tennessee, and that he formerly lived in the State of Alabama and is acquainted with a large number of citizens in and near Decatur, Alabama, and that he is personally acquainted with J. E. Pickett, W. J. Wilson, Lee Murphy, L. R. Womack, Will Irvine, Jodie Quinn, Rufus Carter, Max Saxton, Will Porter, Nathan Washington, Tom Garth, Robert Smith, R. L. Hunter, Council Irvine, Leeper Crump, Otis Boyd, George D. Draper and each of them, and that they and each of them are Negroes and male citizens of Morgan County, Alabama, and they and each of them are generally reputed to be honest and intelligent men and esteemed in the community for their integrity, good character and sound judgment, and are all male citizens of Morgan County, Alabama, as aforesaid, and over the age of 21 years and on information he says they are under 65 years of age, and on information that neither one of them has ever been convicted of any offense involving moral turpitude and they are all householders, or free holders of Morgan County and can all read the English language and are members of the African race, and on information he says that neither one of them is afflicted with a permanent disease or physical weakness such as to render them or either of them unfit to discharge the duties

of a juror as provided under the laws of the State of Alabama. He further states that he is 38 years old and that no Negro ever sat on a jury in Morgan County to his knowledge, and that he had visited in Decatur and lived there for many years.

.....

Witnessed by

.....

Subscribed and sworn to before me
this day of , 1933.

EXHIBIT B.

IN THE

CIRCUIT COURT OF MORGAN COUNTY, ALABAMA.

STATE OF ALABAMA against HAYWOOD PATTERSON, Defendant.	No.

W. M. GARRETT makes oath in due form of law he resides now at Chattanooga, Tennessee, and formerly lived at Decatur, Alabama, and that he has been a frequent visitor to Decatur, Alabama, during the past recent years, and that he is personally acquainted with Leo Sykes, Jim Sykes, Dr. ..... Darken, Dr. ..... Cashner, Robert Bridgeforth, Robert Watkins, Ben Hays, Monroe Moore, John Smith and Tom Macklin, all free holders or householders and male citizens of the Negro race residing in Morgan County, Alabama, and that each and all of them are generally reputed to be honest and intelligent

men and are esteemed in the community for their integrity, good character and sound judgment and over the age of twenty-one years and on information he says they are under the age of sixty-five years and that neither one of them afflicted with a permanent disease or physical weakness such as would render either one of them unfit to discharge the duties of a juror, and that they can read English and no one of them has ever been convicted of any offense involving moral turpitude.

Affiant further states that all the above named parties are Negroes who live in Morgan County, Alabama, and possesses all of the qualifications prescribed by law for jury duty in Morgan County.

Affiant further states that he is fifty-five years of age and that he never knew or heard of any Negro sitting on a jury in Morgan County in his life. He has known of Negroes sitting on juries in the United States Court at Huntsville, but he has never known or heard of a Negro sitting on any jury in the Circuit Court of Morgan County, Alabama, and he states on information and belief that the names of all qualified Negroes have been left off of the jury roll in Morgan County for many years solely and alone on account of the fact that they were Negroes and for no other reason. This has been a custom that had prevailed in Morgan County, Alabama, for more than thirty years to his knowledge.

Affiant further states that he voted himself in Decatur, Alabama, and that the foregoing named Negroes are qualified to vote in Morgan County and are freeholders or householders in Morgan County.

(Signed) .....

Subscribed and sworn to before me
this day of , 1933.

.....

Mr. Knight: The State denies each and every allegation of motion.

[It was stipulated that the testimony taken on the former trial before Judge Horton to quash the venir be offered in evidence, except that the Court reserved the right to rule upon objections. It was further stipulated that the jury roll is the same now as it was when the former motion was made.].

THE TESTIMONY ON FORMER HEARING ON SIMILAR MOTION WAS OFFERED, AS FOLLOWS:

J. H. GREEN, witness called on behalf of the defendant, after being first duly sworn, testified as follows:

Direct Examination by Hon. Samuel S. Leibowitz:

My name is J. H. Green. My official position is Clerk of the Circuit Court of the Eighth Judicial Circuit, Morgan County. I call the names of the jurors on the panel that is drawn. I am present in court during practically all of the time the court is in session. I sit right next to his Honor, the presiding Judge of the Court, where everything that transpires in the court is fully visible. I have been Clerk of the Circuit Court of the Judicial District which I mentioned continuously for four years and a little over. We have three terms a year, I believe, and in addition to these regular terms there were one or two special terms during my occupancy, making something like fourteen terms in all. There are four weeks to a term and about forty jurors a week were called. That makes about 160 jurors called each term, not counting the special jurors. One week each term is capital week, in which about fifty or sixty jurors were called. There were approximately twelve such weeks in all during my occupancy. There were, calculating roughly, about 2500 jurors called. I saw those 2500 jurors when they appeared in court. Not one of them was a colored man. Not one of the 2500 that appeared was a member of the negro race.

Before I was Clerk of the Court, I was first Clerk in the Probate Office for about eleven years. We had jurors in that court on one or two insanity cases for which panels were drawn. Sometimes, but not very often, I visited the regular and special terms of the Circuit Court when it was in session. I have been a resident of Morgan County for about thirty odd years. I don't remember ever seeing any single person of the colored race serve on any jury in Morgan County. The Jury Commissioners for the year 1933 are John W. Tomlinson, J. A. Tidwell and W. J. Brisco, and I believe they were the Jury Commissioners for the year 1932. I have seen them at work, but don't know how they proceeded. I may have looked into the jury roll book, but do not know anything about it. I saw it in the Probate Office some time last year. It is bound; I think it says, "Jury Roll, Morgan County."

Cross Examination by Attorney General Knight:

I do not know how the Jury Commissioners arrive at the list of names they put in the jury box. I just saw them in the room. I did not hear them discussing the qualifications of prospective jurors, nor whether or not they would exclude negroes from the jury. I have never been summoned before a jury commission to pass on the qualifications of jurors.

DR. FRANK SYKES, witness called on behalf of the defendant, after being first duly sworn, testified as follows:

Direct Examination by Hon. Samuel S. Leibowitz:

[The Court agreed to take judicial notice of the population of males between the ages of twenty-one and sixty-five in Morgan County, with leave in the defendant to insert the actual public figures in the record at any time.]

I was born in Alabama in 1892 and have been a resident of Morgan County, Alabama, ever since, except for the fifteen years I was off at school. I attended and was grad-

uated from the graded school. After leaving that school I went to Moorehouse, in Atlanta, Georgia, where I took my academic work. I didn't graduate from Moorehouse, but finished my high school work at Howard University, in Washington, D. C. Then I went to the dental school at Howard University and took a dental course there. I also studied academic subjects, history, literature and English. I took a degree of Bachelor of Arts in addition to my professional course. Since 1927 I have practiced my profession of dentistry in the City of Decatur, Morgan County, Alabama.

I was asked by members of the defense counsel to prepare a list of colored citizens of Morgan County. The names of the men whom I am about to call off are male citizens of Morgan County generally reputed to be honest and intelligent men and esteemed in the community for their integrity, good character and sound judgment. All these men are over twenty-one years of age and under sixty-five, none of them are afflicted with any permanent disease or physical weakness which renders them unfit to discharge the duties of jurors. I think I know what the duties of a juror are, and what a juror is expected to do in a law case. He is expected to sit in the box and try out different questions of fact and render a verdict after discussing the evidence with the other jurors and after listening to the Judge on the law. I believe two or three on the list cannot write; they are householders or freeholders. All of these men I am about to mention are negroes.

Q. Are some of the men whose names you have on that list who are able to read, do they fit these qualifications as a voter in Morgan County?

Attorney General Knight: We object.
Court: Sustain the objection.
Mr. Leibowitz: I respectfully except.

Q. Are you yourself a voter of Morgan County? A. Yes, sir.

Q. Were you examined as to your qualifications as a voter before you were permitted to vote?

Attorney General Knight: We object.

Court: Sustain the objection.

Mr. Leibowitz: We except. The purpose of that question is to show, with reference to the individuals that Dr. Sykes is about to read off who are voters, that those men were examined by the authorities who have the right to give persons permission to vote. I want to show the test to which each of these negroes was subjected before he was permitted to vote—intellectual test. I want to show that these negroes were all examined as to their familiarity with the United States Constitution, and in many instances have not only been required to recite sections of the United States Constitution but have been required to interpret the Constitution.

Attorney General Knight: You make so many arguments you make me change my objection each time.

Mr. Leibowitz: I want to show that the intellectual test that is applied to these negro voters is such that the Court would be constrained to say that if they are voters they possess the intelligence and the judgment which would certainly fit them for the service of jurors in the jury box.

Court: Sustain the objection. In a test of jurors' fitness you can't go into those two questions.

Mr. Leibowitz: I am not seeking to go into that. I am trying to make my point clear, that if a man is intelligent enough to be a voter in this county he is intelligent enough to be a juror.

Court: Sustain the objection. A man might be a voter and past sixty-five years of age.

Mr. Leibowitz: I will show they are under sixty-five.

Court: Sustain the objection.
Mr. Lelbowitz: I except.

Q. You will say, though, that some of the names on this list are voters?

Court: Sustain the objection.
Mr. Lelbowitz: I except.

Leaving the doctors out, the following names meet the qualifications I have mentioned above: H. L. Murphy, Tom Garth, Walker Lipscomb, W. A. Mills, Hess Thompson, Parker McKelvy, C. B. Irwin, Will Irwin, A. L. Harris, J. J. Sykes, Robert Smith, R. L. Hunter, G. F. Robertson, C. M. Sykes, George Reynolds, Oscar Witaker, H. J. Banks, T. W. McWilliams, A. O. Sheffey, E. E. Jones, R. L. Anderson, F. G. Dinkin, Will Steel, Elias Hatton, W. E. Binford, Mack Sexton, Nathan Washington, Neel Sykes, Sr., T. W. Bridges, Julius Williams, John Love, Will Porter, George Nelson, Henry Brown, Robert Browder, James Johnson, William Frierson, Albert Ruffin, Robert Bridgeforth, W. W. Bough, Henry Jackson, Ed. White, Dan Matthews, Hilliard Tate, Allen Draper, Amos Russell, John Humphrey, Clifton Draper, Will Jennings, Oscar Jackson, Oscar Sharply, Claybourn Sharply, Bud Sharply, Lee Bibb, Allen Davis, Tom Davis, Jeff Robinson, Will Townsend. I have two Will Garths, one at Cedar Lake and one at Decatur. Richard Vaughn, Charlie, Tony, Dave Garth, Elmer Garth, Isom McDaniel, R. C. Smith, E. J. Pryor, William Martin, Jim Skinner, Alex Matthews, Henry Mattison, Billie Baker, Will Montgomery, William Murphy, Leslie Luckett, William Johnson, Will Turner, Aninias McDonald, W. J. Wilson, J. E. Pickett, Robert Fuller, J. I. McGahee, Dilliard Williams, Cal Barnett, Charlie Vaughn, Charlie County, Mathew Macklin, John Perry, Tom White, Robert Dawson, Clarence Poke, J. J. Sykes, Robert Sykes, Tom E. Reedus, Frank Ballentine, Will Garth of Decatur, Will Rogers, Jerry Elliott, Mack Lewis, Leo Sykes, Banks Patterson, Asa Jones, J. N. Martin, Forest Settle, Sam Whitaker,

Selpio Garth, Hill Bolden, Daniel Thomas, J. C. Carpenter, James Lyle, Frank Owens, Albert Donald, T. R. Boulware, W. J. Wood.

Q. Are there many others, in your opinion, many other persons of the colored race, within the confines of Morgan County, who fit these qualifications I have mentioned?

Attorney General Knight: We object.

A. I think so.

Mr. Lothowitz: I think he can state from general observation about how many others.

Attorney General Knight: He may state about one, but he can't state as a whole.

Mr. Lothowitz: I want to show that the list, the number of qualified men, are not restricted to the list the doctor gives; that there are many others in the opinion of the doctor whom he doesn't know personally.

Court: Unless he knows them, I sustain the objection to the question as put.

I have never seen any of these men serve on any jury in Morgan County. To my best knowledge, none of them were ever called for service on juries in this county; all of these men are qualified. I have never seen or heard of a single colored man ever serving on a jury in this county. These men I have mentioned have been residents of this county for a good many years, some from fifty-five to sixty years. To the best of my knowledge, T. R. Boulware is the newest comer. He has been here for eight or more years. Most of these men have been here all of their lives, and none less than five years.

Cross Examination by Attorney General Knight:

Both white and colored live in each of the communities from which these names come.

Q. You got Mr. Leibowitz up that list; could you get me up a list of the white people who have never seen service on a jury—don't you know there are a lot of white people in this county who have never served on a jury?

Mr. Leibowitz: I object to that on the ground it makes no difference whether there are some white people who served or did not serve; the complaint before the Court is whether or not negroes have been systematically excluded from serving on juries.

Court: I will let him ask if there are not some white people who have been excluded.

Mr. Leibowitz: I except.

Q. Don't you know there are white people in this county who possess the qualifications of those on that list, who you have mentioned possess the qualifications who have never served on a jury?

Mr. Leibowitz: I object.

Court: Overrule the objection.

I don't know of any white people in this county who have never served on a jury. All of these people whose names I have mentioned are esteemed and highly regarded, men of sound judgment, and men whom I think capable of passing on human rights and personal liberties. They have the general reputation as being men of good character and sound judgment. I do not know that one man whose name I called on that list is in the penitentiary right now serving sentence. I do not know that another of the negroes on the list was in the Justice of the Peace Court a few days ago charged with bastardy.

I do not know whether or not the Jury Commission of this county considered me for jury service. I do not know whether they considered any of the names I mentioned for jury service. I don't know whether they are in the box, whether they are in the jury box or on the rolls.

Q. You don't know that the Jury Commission just arbitrarily excluded those names, do you?

Mr. Leibowitz: We object as calling for the operation of the Jury Commissioners' minds.

Court: Overrule the objection.

Mr. Leibowitz: I except.

A. I don't know.

I don't know how the Jury Commission selected the names in the box. I don't know whether my color was considered or not.

Re-direct Examination by Hon. Samuel S. Leibowitz:

I am an educated man. I know what arbitrary means. A man acts arbitrarily when he does things without regard to reason or justice.

Q. I will ask you this question, knowing these men whose names you have mentioned and their qualifications, if it turned out in this case that these men were never put on the jury roll, would you then say the actions of the authorities that had the selection of jurors under their power were arbitrary in not putting their names on the jury roll?

Court: Sustain the objection.

Mr. Leibowitz: I took him as an expert and I want to show this by this witness who testified to the names of these men, if the names of these men were not on the jury roll in his opinion the Jury Commission acted arbitrarily. We except.

DR. N. E. CASHIN, witness called on behalf of the defendant, after being first duly sworn, testified as follows:

Direct Examination by Hon. Samuel S. Leibowitz:

I am a physician, licensed to practice under the laws of the State of Alabama. I have been a physician twenty-four years. I am a graduate of Howard University Medical School, Howard University, Howard Preparatory Academy and Phillips Exter Academy, New Hampshire. I studied one year at Phillips Exter Academy. I am a married man. Mrs. Cashin is alive. I have no children. I was born in Morgan County and have lived here continuously except for the time I was studying; in all my life in Morgan County. I have never known of a single instance where any colored man of the African race was called to serve as a juror; I have never seen a colored man serve on a jury in any part of the State, nor heard of any in the State Courts; I understand some have been called in the Federal Court. I have seen before the list of names you are handing me. I am intimately familiar with every man whose name is on that list. All of them are male citizens of Morgan County, who are generally reputed to be honest and intelligent men, and who are esteemed in the community for their integrity and good character and sound judgment. I do not know of any of them under twenty-one. They are all men of mature age; two of them may be over sixty-five. None of them are habitual drunkards. One, Leo Sykes, is blind, but there is nothing else about his condition which renders his mentality bad so he cannot think or have good reason. None of these men have ever been convicted of any offense involving moral turpitude that I know of. All are able to read English, except one or two, who are householders.

Q. Are there several men on that list who are voters? A. Yes, sir.

Q. And vote in all the elections, voters that are qualified to vote? A. Yes, sir.

Q. After having passed the test that is required of a voter?

Attorney General Knight: We object.
Court: Sustain the objection.
Mr. Leibowitz: I except.

I can name from the list with full knowledge and without question H. M. Murphy, Tom Garth, Walker Lipscomb, W. A. Mills, Hess Thompson, Parker McKelvy, C. R. Irwin, Will Irwin, N. L. Harris, J. J. Sykes, Robert Smith, R. L. Hunter, G. F. Robinson, C. M. Sykes, George Reynolds, Stanley Basham, Oscar Whitaker, A. J. Banks, T. W. McWilliams, A. O. Sheffey, E. E. Jones, R. L. Anderson, F. G. Dinkins, Will Steel, Lias Hatton, W. E. Binford, Nathan Washington, Neil Sykes, T. W. Bridges, Julius Williams, John Love, Will Porter, George Nelson, Henry Brown, Robert Browder, J. H. Harris, James Johnson, William Frierson, Albert Ruffin, Robert Bridgeforth, W. W. Rough, Henry Jackson, Edmond White, Dan Matthews, Hilliard Tate, Allen Draper, Amos Russell, John Humphrey, Clifton Dupper, Wm. Gee, Abe Long, William Craig, William James, Oscar Jackson, Oscar Sharply, Claybourn Sharply, Byrd Sharply, Lee Bibb, Allen Davis, Tom Davis, Jeff Robinson, Will Townsend, Will Garth, Richard Vaughn, Charlie Toney, Dave Garth, Elmer Garth, Phillip Lightfoot, I. Z. Moore, Isom McDaniel, R. C. Smith, E. J. Pryor, William Martin, Jim Skinner, Alex Mathews, Henry Mattison, Billie Baker, Will Montgomery, Charlie Montgomery, William Murphy, Leslie Luckett, William Johnson, Will Terry, Aninias McDonnell, W. J. Wilson, J. E. Pickett, Rev. Womack, Rev. Robert Fuller, Rev. John Watkins, Rev. J. I. McGahee, Rev. W. A. Wilhite, Rev. Dilliard Williams, Rev. Newby, Rev. George Eldridge, Rev. T. G. Draper, John Dillon, Cal Barnett, Charles Vaughn, Charles Coaty, Mathew Macklin, John Perry, Tom White, Robert Dawson, Clarence Pope, J. J. Jackson, Robert Jackson, E. Owens, Tommie Reeslus, Frank Valentine, Will Gazth, Will Rogers, Jerry Elliott, Mack

Lewis, Banks Patterson, Asa Jones, J. N. Martin, Forest Settle, Sam Whitaker, Scipio Garth, Hill Holden, Daniel Thomas, J. C. Carpenter, James Lyle, Leo Sykes (blind), Frank Owen, Albert Donald.

Cross Examination by Attorney General Knight:

I do not know how the Jury Commission goes about selecting the jurors; I have an idea. I do not know whether or not the jury commissioners considered those names. I do not know whether they are on the jury roll or not.

H. J. BANKS, witness called on behalf of the defendant, after being first duly sworn, testified as follows:

Direct Examination by Hon. Samuel S. Leibowitz:

My name is Hewlett J. Banks. I reside in Decatur in this county. I was born in Morgan County and have lived here all my life. I am fifty-five. I am a city bill poster and have been for twenty-seven years. I had eighth grade schooling. I vote and have been voting fifteen years.

Q. Did you have to pass certain tests to become a voter?

Attorney General Knight: We object.

Court: Sustain the objection.

Mr. Leibowitz: My point is I want to show this man's mentality, and I want to show what is knowledge is as to the civic and community affairs, and to establish his qualifications, and others' qualifications by his own qualification, as to sound judgment, and as to intelligence, and as to all things going to make up the requirements for a man's service on a jury. He doesn't have to be a voter to be put on a jury, that is true, but if he is a voter and has passed certain tests, I say that is material and should be considered by your Honor in passing on his qualifications as a juror.

Court: Sustain the objection.

Attorney General Knight: My position is this, the law provides what tests a man must get to be a voter. It reposes a discretion in the Registrar, which is appointed by law. The law also provides the qualifications for a juror and it reposes that discretion in the jury commission, so you would be testing the discretion of one body by the action of another body.

Mr. Leibowitz: No, that isn't the point.

Court: Do you want to show the competency of this man?

Mr. Leibowitz: Yes, sir.

Court: I will sustain the objection to the question, I will let you show he is a voter.

Mr. Leibowitz: What I want to show is this, I want to show this man before he became a voter had to know the Constitution of the United States and had to construe the Constitution of the United States.

Attorney General Knight: He testified he was a voter.

Mr. Leibowitz: I want to show what this man had to go through with before they permitted him to become a voter, to show his intelligence and his knowledge.

Court: Sustain the objection.

Mr. Leibowitz: I except.

Q. Are you familiar with the Constitution of the United States? A. Some of it.

Q. The time you were declared a voter were you examined on the Constitution of the United States?

Attorney General Knight: We object.

Court: Sustain the objection.

Mr. Leibowitz: We except. For the purpose of the record, and not to be captious, I want to put this question.

Q. Were you required by the Registrar at the time you became a voter, or before you became a voter, before you were permitted to vote, to construe and define certain sections of the Constitution of the United States?

Court: Sustain the objection.
Mr. Leibowitz: I except.

Q. Do you read the newspapers? A. I read the newspapers and magazines. I regularly attend church. In my leisure time I talk with my fellowmen about the affairs of the day, the happenings in the nation, the State and the local community. I engage in political affairs and in social relations with my fellowmen. I have discussed matters of education of the children of my race with other people, although never on the school board. In all my life in Morgan County I have never known of one instance, nor has any ever come to my knowledge, of any negro ever serving on a jury.

I do not drink and am not afflicted with any permanent disease or physical weakness which would render me unfit to discharge the duties of a juror. I think I understand that the duties of a juror are to listen to the testimony, listen to the witness and the evidence and pass on questions of fact, and to the instruction of the Court as to the law, and render a fair verdict under those circumstances. I can read and write. I have never been convicted of any offense involving moral turpitude, nor have I ever been convicted of anything. I am a householder, have a family and children. I myself have never been summoned for jury duty at any time, never been called to court. I know of no other negro ever being called to the court in Morgan County to serve on a jury; I never heard of any. I come to court as a spectator every chance I get. I come with frequent regularity to the Circuit Court in this county and look at the proceedings. I have never seen in my life any negroes step up as jurymen. I assisted in supplying this list of names of negroes of Morgan County, with all of whom I am intimately, person-

ally acquainted. Some have lived there all their lives, not one under ten years. I visit and am in contact with many of them, some are members of my church. I know others who know these in the community. All on the list are male citizens of this County, generally reputed to be honest and intelligent men and esteemed in the community for their integrity, good character and sound judgment. None are under twenty-one nor over sixty-five years of age, and none are habitual drunkards nor afflicted with any permanent disease or physical weakness that would render them unfit to discharge the duties of a juror, and none cannot read English nor was ever convicted for any offense involving moral turpitude; those that cannot read English are house holders or free holders. As far as I know these men have never served on a jury nor ever been called to serve on a jury in Morgan County.

Omitting the doctors exempt from jury duty, on the list are Frank Sykes, myself, Rev. E. Mison, A. C. Ruffins, Henry Jackson, H. L. Murphy, E. E. Jones, Rev. Arthur Matthews, Prof. Council Harris, a local teacher; Prof. J. E. Pickett, principal of the Decatur school; Prof. W. J. Wilson, principal of the East Decatur school; Prof. G. W. Bridges, employed by the United States Government here to teach in school how to put up fruit and stuff; H. Swift, Arthur Roberson, Sam Deemer, C. V. Hill, John Chandler, W. L. Swoops, F. K. Vaughn, Bank Patterson, John W. Bates, William Frierson, J. H. Vaughn, Dallas Priest, Rev. Wilson, Charles Brooks, R. L. Anderson, Frank Owen, A. O. Sheffey, Carl Sykes, J. J. Sykes, W. J. Wood, Clarence Pope, Willie Rogers, Rev. L. R. Womack, Percy Johnson, Aron Orr, Clarence Bailey, Neal Sykes, Alonzo Harris, Harry Johnson, James Hill, William Garth, Solomon Young, Will Porter, T. R. Bridges, T. W. McWilliams, W. W. Bough, J. N. Martin, William Gee, A. W. Matthews, Rev. I. W. McGahee, George Reynolds, Rev. Pollard, Rev. W. A. Wilhite, Dan Matthews.

I never asked the Jury Commission of my county not to put me on the jury roll. I never wrote them a letter or communicated with the Jury Commissioners. I never

told them, "I don't want to serve on a jury." If I were drawn I would be willing to serve and do my duty as a citizen. I know some of the men on this other list; I am personally acquainted with I. Z. Moore, Rev. James Hyter, Robert Pates, Otis Johnson, Green Shelby, F. G. Dinkins, Dr. W. H. Sherrard, E. D. Owens, Ed Harris, William Matthews, Edmon White, George Nelson, James Shelby, Council Irwin, Will Irwin, Charlie Vaughn, J. J. Jackson, Henry Mattison. These men have all the qualifications and none of the disabilities outlined before. I never heard of any of these men ever being summoned to appear in court as a juror.

Cross Examination by Attorney General Knight:

I am an average speller, not an expert. I haven't been all around town working on this case; it didn't take me long to get up those names I assisted in getting up. I know them.

Q. Do you know Ben Hayes? A. I do.

Q. Do you know what sort of character he possesses?

Mr. Leibowitz: I object, he hasn't mentioned Ben Hayes.

Attorney General Knight: I expect my cross examination to develop the fact that none of them knew, actually knew, the qualifications of the men they have sworn possessed the qualifications of jurors.

Court: Was Ben Hayes one of them on the list?

Witness: No, sir, one of them on a different list.

Court: Overrule the objection.

Mr. Leibowitz: I except.

I know Ben Hayes; he made a pretty good citizen, as far as I know; he is not violent and mean; I don't know about his intelligence.

Q. Tell me more about Ben Hayes, what is it you are holding back, tell us all about him?

Mr. Leibowitz: I object to that question on the ground this witness, Mr. Banks, has not included Ben Hayes in his list.

Court: If I understand it, Ben Hayes has been testified to as possessing these qualifications?

Mr. Leibowitz: Not by the last two witnesses.

Court: Then it becomes an issue whether or not Ben Hayes has those qualifications, of course, any question which would go to show he had those qualifications

Mr. Leibowitz: We are not concerned about that man because we specifically struck him from the list and we claim he was put on that list through inadvertence.

Court: I will let you ask him the question.

Q. What about him?

Mr. Leibowitz: If there is going to be any more snickering and laughing from some young gentlemen, I am going to ask you to clear the court room. This is no burlesque show or Roman holiday for the crowd.

Court: There is no use being excited over any matter that way. Gentlemen, I don't want any laughing, and I am not going to have it, the Court will not permit it and I don't want to hear any in the court room, any laughing or anything of that kind.

Attorney General Knight: I am glad you mentioned that to the crowd, I am tired of hearing of Roman holidays.

I suppose Ben Hayes is at home; I don't know whether he has ever been to the penitentiary or not, I haven't heard of him being there. Ben Hayes has been a good man as

far as I know, I don't know anything wrong with Ben Hayes.

Mylam Eady wasn't on the list; he has been a good citizen as long as he has been in Decatur. I believe he is esteemed in the community as a man of sound judgment. He lives on West Lafayette Street, in this town. I see him about every day. He has never been sent to the penitentiary nor been convicted of any offense that I know of.

More than one Garth lives at Cedar Lake; Will Garth, who lives there, I think is all right, as far as I know of him. I don't know if he is not now in the penitentiary. I don't know much about him; he wasn't on the list I prepared. I took some part in politics, and in church matters. I never sat on a Federal Jury. My father has, but I haven't.

Q. Do you know Mr. Tidwell? A. Which one?

Q. The Jury Commissioner? A. Yes, sir.

Q. Do you know Mr. Tomlinson, another Jury Commissioner? A. I know Mr. Tidwell, a Jury Commissioner; I don't think I know Mr. Tomlinson, and that one. I did not see them make up the jury roll of this county.

Q. Do you know of any white people in this county, who have never sat on the jury, who possess as good qualifications as those names?

Mr. Leibowitz: I object because it is incompetent, irrelevant and immaterial, the fact the Jury Commissioners may have wrongfully and arbitrarily excluded white people from that list is no excuse to exclude the negro because of his race or color.

Court: Overrule the objection.

Mr. Leibowitz: I except.

A. I don't know what white people sat on the jury.

I never saw the jury roll and I do not know whether my name or any of the names on the list I submitted is on that roll or not.

Q. Do you know whether or not Mr. Tidwell, Mr. Brisco and Mr. Tomlinson, the Jury Commissioners of this County considered those very names you submitted here?

Mr. Leibowitz: I object.
Court: Overrule the objection.
Mr. Leibowitz: I except.

I don't know whether the Jury Commissioners considered the names submitted here when they made up the jury roll.

Re-direct Examination by Hon. Samuel S. Leibowitz:

I never saw any Jury Commissioner going around the colored sections of this county, holding any inquiry to find any colored person qualified to serve on a jury. I lived here all my life, but never saw or heard of a single instance of any Jury Commissioner ever circulating among the negroes of this county to ask them questions as to their qualifications for the purpose of putting their names on the jury roll.

Q. Did any Jury Commissioner ever send for you to examine you as to your qualifications, to see whether or not you were a man of intelligence and honesty and good character, and whether you were a man who possesses all of these qualifications, to find out if you were qualified, was there any such inquiry made as to you? A. No, sir.

Q. Or any other negro you know of?

Attorney General Knight: We object.
Court: Sustain the objection.
Mr. Leibowitz: May I respectfully except?

Q. Did you ever see any advertisement in any newspaper, signed by the Jury Commissioners, requesting any negroes who possessed the qualifications referred to to appear before the Jury Commissioners?

Attorney General Knight: We object.
Court: Sustain the objection.
Mr. Leibowitz: I respectfully except.

I never got any official notice, nor did any negro I know from any jury board or jury commissioner to appear for an examination as to our qualifications.

Re-cross Examination by Attorney General Knight:

I haven't heard of any inquiry. A man twenty-one years of age, of good, sound judgment, and a property owner, and a law-abiding citizen, who stands good in the community, is qualified. I don't know whether they ever considered me.

L. R. WOMACK, witness called on behalf of the defendant, after being first duly sworn, testified as follows:

Direct Examination by Hon. Samuel S. Leibowitz:

My name is L. R. Womack. I am a minister of the Gospel, pastor of the First Missionary Baptist Church, colored, in Decatur, since October 24, 1931, having 380 parishioners, both men and women, with all of whom I am personally pretty well acquainted. For seven years before October 24, 1931, I was pastor of the Thankful Baptist Church at Johnson City, Tenn. This letter, dated October 16, 1931, was given me voluntarily by Mayor B. B. Snipes of Johnson City, white.

Q. According to this letter, signed by the Mayor of Johnson City, Tennessee, which certifies, "I have known—"

Attorney General Knight: We object.

Q. "I have known Rev.—"

Attorney General Knight: We object.

Mr. Leibowitz: We are not before a jury now, General Knight; I want to put the question on record.

Q. "This is to certify I have known L. R. Womack during the past six years, and I have known him to be the pastor of the Thankful Baptist Church at Johnson City, Tennessee. He is a fine Christian gentleman, and is constantly looking after the welfare of his people. Rev. Womack enjoys the confidence of the people who know him, both white and colored. Sincerely yours, B. B. Snipes, Mayor."

Court: Sustain the objection.

Mr. Leibowitz: I except.

I am acquainted with the men whose names are on the list you show me. They are all male citizens of Morgan County, who are generally reputed to be honest and intelligent men, and who are thought well of in the community for their integrity, good character and sound judgment, and none of them under twenty-one or over sixty-five years of age, none of them habitual drunkards, and none of them afflicted with a permanent disease or physical weakness which would render them unfit to discharge their duties as a juror, and none of them cannot read English, and if there are any persons who cannot read English, those persons are householders or freeholders, and none of them have ever been convicted of any offense involving moral turpitude. In all my life in Morgan County I have never known of a single instance of a negro serving on a jury, nor in all my experience in the county of a negro ever being summoned to serve on a jury, including myself. I have never been examined as to my qualifications by anybody, by the Jury Commission, or their agents, servants or employees, nor do I know of any other colored person ever being examined as to qualifications for the jury. I don't know whose name is on the jury roll, nor how they

make it up. No one ever told me, not that I know of, explained it to us colored people. Nobody has ever brought to my attention, either publicly or privately, or by advertisement, any desire on the part of the Jury Commissioners to take qualified negroes on the jury roll.

LIST OF REPRESENTATIVE NEGROES OF MORGAN COUNTY.

School Teachers: W. J. Wilson, J. E. Pickett.

Preachers: Rev. L. A. Womack, Robert Fuller, John Watkins, J. I. McGahee, W. A. Wilhite, Dilliard Williams, Rev. Newby, George Eldridge, U. G. Draper.

H. L. Murphy, Tom Garth, Walker Lipscomb, W. A. Mills, Hess Thompson, Parker McKelvy, C. B. Irwin, Will Irwin, A. L. Harris, J. J. Sykes, Robert Smith, R. L. Hunter, C. F. Robinson, C. M. Syles, George Reynolds, Stanley Basham, Oscar Whitaker, H. J. Banks, T. W. McWilliams, A. O. Sheffey, E. E. Jones, R. L. Anderson, F. G. Dinkins, Will Steele, Lias Hatton, W. E. Binford, Mack Saxton, Wm. Gee, Abe Long Nathan Washington, Neal Sykes, Wm. Craig, T. W. Bridges, Julius Williams, John Love, Will Porter, George Nelson, Henry Brown, Robert Browder, J. H. Harris, James Johnson, Wm. Frierson, Albert Ruffin, Robert Bridgeforth, W. W. Bough, Henry Jackson, Edmond White, Dan Matthews, Hilliard Tate, Allen Draper, Amos Russell, John Humphry, Clifton Draper, Will Jennings, Oscar Jackson, Oscar Sharply, Claybourn Sharpley, Byrd Sharpley, Lee Bibb, Allen Davis, Tom Davis, Jeff Robinson, Will Townsend, Will Garth (Cedar Lake), Richard Vaughn, Charlie Toney, Dave Garth, Oliver Garth, Philip Lightfoot, I. Z. Moore, Isom McDaniel, R. C. Smith, E. J. Pryor, Wm. Martin, Jim Skinner, Alex Mathews, Henry Mattison, Billy Baker, Will Montgomery, Charlie Montgomery, Wm. Murphy, Lesly Luckett, Wm. Johnson, Will Terry, Ananias McDonald, John Dillon, Cal Barnett, Charles Vaughn, Charles Couty, J. A. Dean, Mathew McLean, Tom White,

Robert Dawson, Clarence Pope, J. J. Jackson, Robert Jackson, E. I. Owens, Tommy Reedus, Frank Ballentine, Will Garth (Decatur), Jerry Elliott, Mack Lewis, Leo Sykes, Banks Patterson, Asa Jones, J. N. Martin, Forest Settle, Sam Whittaker, Scipio Garth, Hill Bolden, Daniel Thomas, J. C. Carpenter, James Lyle, Frank Owens, Albert Donald.

Cross Examination by Attorney General Knight:

I testified that I didn't know how the Jury Commissioners selected the juries in Morgan County.

Q. You don't testify they didn't consider the colored people in this county when they made up the jury rolls, do you? A. That question wasn't asked me.

Q. I am asking you now.

Mr. Leibowitz: We object to that question on the ground it is incompetent, irrelevant and immaterial and if the question is directed to be answered then I rightfully urge upon the Court the right to inquire of this witness whether or not if the men of the character he has mentioned have never been called for jury service or jury duty if they have been kept off the list, whether that would be arbitrary, in his opinion.

Q. I will ask you and repeat the question whether or not you know whether the Jury Commission of Morgan County considered this list of names here you submitted?

Court: Overrule the objection.

Mr. Leibowitz: I except.

I have no information whatever coming from the Jury Commission of the county; I don't know whether or not they considered the list of names.

Re-direct Examination by Hon. Samuel S. Leibowitz:

Q. Mr. Womack, you have been brought here to give your opinion as to the qualifications of certain people on that list? A. Yes, sir.

Q. By reason of your knowledge of them and what other people told you about them, their reputation and so forth? A. Yes, sir.

Q. If it is shown in this case beyond any doubt that there was no negro, let alone these qualified men you spoke of, ever put on that roll, would you then say in your opinion as a citizen of this community that the exclusion of such negro from that roll was arbitrary and unwarranted by reason of his race or color?

Attorney General Knight: We object.
Court: Sustain the objection.
Mr. Leibowitz: I except.

J. J. SYKES, witness called on behalf of the defendant, after being first duly sworn, testified as follows:

Direct Examination by Hon. Samuel S. Leibowitz:

My name is James J. Sykes. I was born in Decatur and have lived here all my life. I am fifty-seven years of age. I am unmarried, have relations in town. I have a moving picture theatre business on Vine Street in Decatur. I never drink, nor am I suffering from any permanent disease or physical weakness which would render me unfit to discharge the duties of a juror. I think I have a fair idea of what the duties of a juror are. He is expected to render a judgment in the case according to the evidence and according to the law as announced by the Court in fairness and justice.

Q. According to your idea as to the duties of a juror, do you know of any reason why you couldn't discharge those duties fairly and honestly? A. No, sir.

Attorney General Knight: We object.
Court: Sustain the objection.
Mr. Lathrwite: I except.

I have never been convicted of nor committed any offense of any kind. I read and write English, vote since 1901. In my business I meet various citizens of the community; sometimes I discuss with them and neighbors the affairs of the day, topics of the time, what is happening in the nations, the state and the community. I engage in social relations, visit with my neighbors, talk with them about affairs of the day. I discuss politics considerably with citizens and neighbors. I believe in the teachings of the Bible and am a member of the Baptist Church, and attend pretty regular for thirty years. I believe in the Constitution of the United States and in supporting my Court and its officers. I have never served on any jury in this county, nor ever been summoned to serve. I have never been examined by anybody connected with the administration of the jury system as to my qualifications, nor were any tests ever put to me, mental or otherwise, by anybody of the Jury Commission, nor have I ever been requested to appear for such test. I have never refused to serve as juror. If I had been selected, I would have been willing to do my duty as a citizen in a jury box fairly and honestly. I am personally acquainted with the men on the list I have; they are all male negroes over twenty one and under sixty five, with the possible exception of two or three. They are all citizens of Morgan County, some in Decatur. As far as I know, all are generally reputed to be honest and intelligent men, favorably thought of in the community for their integrity, good character and sound judgment. As far as I know—and I know them intimately—not one of them is an habitual drunkard, none of them are afflicted with a permanent disease or physical weakness which would render them unfit to discharge the duties of a juror. I don't know anybody that can't read, to my knowledge. None have ever been called to serve on any jury in Morgan County. So far as I know, no one of them has ever been

asked to appear for jury duty in any Circuit Court in Morgan County. I have on many occasions come to the court rooms in this county at the terms of court and been a spectator. I saw jury cases tried before the juries in this county on many, many occasions. I have never seen negroes on a jury in this county. There are many more negroes besides those who possess the qualifications called to my attention for service on juries.

[List filed to conserve time is as follows:]

Behind Teachers: W. J. Wilson, J. B. Pickett.

Preachers: Wommack, Robert Fuller, John Watkins, J. L. McCluhee, W. A. Willitte, Hilliard Williams, Newby, George Eldridge, U. G. Draper.

Business Men: H. L. Murphy, Tom Garth, Walker Upscomb, W. A. Mills, Hess Thompson, Parker McKelvey, C. H. Irwin, Will Irwin, A. L. Harrison, J. J. Sykes, Robert Smith, R. L. Hunter, G. F. Robinson, C. M. Sykes, George Reynolds, Stanley Basham, Oscar Whitaker, H. J. Banks, T. W. McWilliams, A. O. Shelley, B. F. Jones, R. L. Anderson, F. G. Dinkins, Will Steele, Lins Hatton, W. F. Binford, Mack Saxton, Wm. Gee, Abe Long, Wm. Craig, Nathan Washington, Neal Sykes, E. W. Bridges, Julius Williams, John Love, Will Porter, George Nelson, Henry Brown, Robert Browder, J. H. Harris, James Johnson, Wm. Frierson, Albert Ruffin, Robert Bridgeforth, W. W. Baugh, Henry Jackson, Edmond White, Dan Mathews, Hilliard Tate, Allen Draper, Amos Russell, John Humphry, Clifton Draper, Will Jennings, Oscar Jackson, Oscar Sharpley, Claybourn Sharpley, Byrd Sharpley, Lee Bibb, Allen Davis, Tom Davis, Jeff Robinson, Will Townsend, Will Garth (Cedar Lake), Richard Vaughn, Charlie Toney, Dave Garth, Elmer Garth, Phillip Lightfoot, I. Z. Moore, Isom McDaniel, R. C. Smith, E. J. Pryor, Wm. Martin, Jim Skinner, Alex Mathews, Henry Mattison, Billy Baker, Will Montgomery, Charlie Montgomery, Wm. Murphy, Leslie Luckett, Wm. Johnson, Will Terry, Aninias McDonald, John Dillon, Cal Barnett, Chas. Vaughn, Chas.

Couty, J. A. Dean, Matthew McLire, John Perry, Tom White, Robert Dawson, Clarence Pope, J. J. Jackson, Robert Jackson, Ed Owens, Tommie Reedus, Frank Ballentine, Will Garth (Decatur), Will Rogers, Jerry Elliott, Mack Lewis, Leo Sykes (blind), Banks Patterson, Asa Jones, J. N. Martin, Forest Settle, Sam Whittaker, Scipio Garth, Hill Bolden, Daniel Thomas, J. C. Carpenter, James Lyle, Frank Owens, Albert Donald.

I am a notary public, designated by the Governor of Alabama as a person of moral character and good reputation and intelligence, empowered to administer oaths to affiants. I am familiar with all on the list but one, J. C. Carpenter. I don't know him. Those men have the qualifications of the men on the other list referred to.

Q. In your opinion, according to the test I have outlined, they are fully qualified to serve and entitled to be on that jury list?

Attorney General Knight: We object.
Court: Sustain the objection.

[List of names set forth in testimony of L. R. Womack inserted.]

I know intimately all the men on the following list; all are male negro citizens of Morgan County, for a great many years; I think they meet all the tests of qualifications: Dr. N. E. Cashin, Dr. Frank Sykes, Dr. Newman Sykes, Dr. D. V. Darden, H. J. Banks, Rev. E. Mison, A. C. Ruffins, Henry Jackson, H. L. Murphy, Dr. T. R. Boalware, E. E. Jones, Rev. Arthur Matthews, Prof. Council Harris, Prof. J. E. Pickett, G. W. Eldridge, Prof. W. J. Wilson, Thomas Eldridge, John Eldridge, H. Swift, Arthur Roberson, Sam Deamer, C. V. Hill, John Chandler, W. S. Swoopes, F. E. Vaughn, Banks Patterson, John W. Bates, William Frierson, J. H. Vaughn, Dallas Priest, Rev. Willie Wilson, Charles Brooks, R. L. Anderson, Frank Owens, Dr. A. O. Sheffey, Carl Sykes, J. J. Sykes, Dr. W. J. Woods, Clarence Pope, Willie Rodger, Rev. L. R.

Womack, Percy Johnson, Aron Orr, Clarence Bailey, Neal Sykes, Alonzo Harris, Harry Johnson, Luther Straughter, James Hill, Solomon Young, Will Garth, Will Porter, T. R. Bridges, W. W. Bough, T. W. McWilliams, J. N. Martin, Wm. Gee, A. W. Matthews, Rev. I. W. McGahee, Rev. Shy, George Reynolds, Rev. Polard, Rev. W. A. Wilhite, Dan Matthews.

I know the men on the following list; the same holds true of them as of the men on the other list. I have never known of any of those negroes serving or ever being summoned for jury duty in this county. I. Z. Moore, Joe Washington, P. F. Ballentine, Sr., Rev. James Myter, Robert Pates, P. F. Ballentine, Jr., Otis Johnson, Rev. James Cater, Green Shelby, F. G. Dinkins, Dr. W. H. Sherrard, W. E. Binford, Ed Owens, Oscar Whitaker, Ed. Harris, Rev. James Neal, Prof. P. C. Nick, Prof. N. I. McDonald, Prof. Thompson, Willie Mathews, Edmond White, George Nelson, James Shelby, Charlie Toney, Council Irvin, Will Irvin, Charlie Vaughn, J. J. Jackson, Henry Mattison, Jerry Elliott, Prof. Breeding.

Some on those lists are men who served this country in the World War, who went across the sea and fought for the flag.

Cross Examination by Attorney General Knight:

I am Dr. Frank Sykes' uncle. I served on a United States Jury eight or nine years ago, but never on a jury in this county. I don't know who selects United States Juries; I know who selects these juries. I like politics. I don't know whether I would make a good Jury Commissioner or not. I said I think all on the list possessed the qualificatfons. I have not examined exhaustively into their character and reputation, and don't know whether the Morgan County Jury Commissioners did, or whether they reached a different conclusion from mine. I don't know whether they considered them or not. I wouldn't say they hadn't.

John H. Harris possesses a good reputation, as far as I know; he lives on the west side of town over here. I guess he is not in the jury box, but don't know; I never saw the jury roll. I had no opportunity to see it. I never saw Mr. Tidwell, Mr. Tomlinson and Mr. Brisco when they were engaged in the selection of the jury roll for this county and don't swear they didn't consider the names of these people.

W. J. WILSON, witness called on behalf of the defendant, after being first duly sworn, testified as follows:

Direct Examination by Hon. Samuel S. Leibowitz:

My name is Rev. W. J. Johnson. I am a Baptist minister of the Gospel. My congregation is St. Luke Baptist Church, Athens, Alabama, in Limestone County. I was born in Montgomery County, Alabama, live in Morgan County twenty-two years and preach in Limestone County. I finished the Normal School, a school of collegiate rank at Montgomery, Alabama. I took my A.B. from State College at Montgomery, Alabama. I am a family man, have children. I preach and teach, I am principal of Gibbs Street colored school in this city now. I received a teaching license after an examination by the State of Alabama, an investigation as to morality, academic qualifications, and moral standing, and am certified as the type of person to teach the citizens of Alabama. I have never served on a jury in the County of Morgan; no Jury Commissioner ever sent for me to come to court and serve on a jury. I have known of a colored man being sent for to serve on an Alabama jury, but not in Morgan County. I am over twenty-one and under sixty-five; I am a total abstainer; I am not now, nor was I ever afflicted with a permanent disease or physical weakness that would render me unfit to discharge the duties of a jury.

My conception of a juror is he should be able to determine the evidence and out of the evidence presented to him find the truth and give his verdict; the juror passes on the facts and applies the law, as stated by the Judge, to the facts fairly and impartially; and renders a judgment on the evidence. I can read English. I have never been convicted of any offense involving moral turpitude; I am a member of the African race, a negro, as were all the preceding witnesses, except the Court Clerk. With the exception of Amos Russell, Oscar Sharpley, Claybourn Sharpley, Byrd Sharpley, Lee Bibb, Jim Skinner, John Perry, Hill Boulden, Arthur Robertson and John Chandler, I know all the men on these four lists, some I know well, the others by reputation. As far as I know they are all male citizens of this county, who are generally reputed to be honest and intelligent men, and esteemed in the community for their integrity, good character and sound judgment; all over twenty-one, and, I think, none over sixty-five. I don't think there is any habitual drunkard among those men. None are, to my knowledge, afflicted with any permanent disease or physical weakness which would render them unfit to discharge the duties of a juror; I don't know one that can't read English. I have never known any of these men on these four lists that has ever been summoned to serve on a jury in this county; I myself was never examined by the Jury Commissioners, nor at any time ever asked by anyone connected with the jury system any questions or put to any tests as to my qualifications as a juror, nor sent for for such purpose; nor do I know any men on these lists ever being sent for to be put through any test. I have never written any letter or communicated with any jury official in this county, stating I would not serve as a juror. I believe in the Constitution and the laws of the State of Alabama to the fullest extent and also the Constitution and the laws of the United States of America.

[Four lists inserted in record with same force and effect as if named by witness; one list is fully set out in testimony above of L. R. Womack; other lists are inserted in transcript herein of testimony of J. J. Sykes, names eliminated by this witness excluded.]

If summoned or selected I would freely and conscientiously serve as a juror.

Cross Examination by Attorney General Knight:

The last time I was in Montgomery was last July. I attended the State Masonic Grand Lodge. I take part in the affairs of my people; in politics; I do not belong to the Communist Party. I eliminated certain people from the lists. I. Z. Moore lives in the eastern part of this town. Most of these names are from the town, some of them live in the county. Dave Garth is a farmer and a man of good moral character, as far as I know; so is the Garth at Cedar Lake. I don't know if one of them is not in the penitentiary; every time you put a man in the penitentiary doesn't say he isn't good. I know I haven't been called to court to be examined for jury service; I think that is evidence I was not examined. I don't know whether Mr. Tidwell, Mr. Tomlinson and Mr. Brisco ever examined my reputation nor whether they examined me to ascertain whether I was a man of sound judgment or to find out or consider my qualifications for jury service. I don't know and couldn't say whether they considered the qualifications of the people on that list for jury service. I don't know whether these names are on the jury roll or not.

Re-direct Examination by Hon. Samuel S. Leibowitz:

In all my life no man that I know of, black or white, has ever said a single word against my reputation, honor or integrity. I am a member of the Republican Party and have been since I was twenty-one.

Recross Examination by Attorney General Knight:

I do not belong to the Lily White or black and tan section of the party. I do not know of my knowledge whether or not anyone ever questioned the reputation of this list of names.

J. E. PICKETT, witness called on behalf of the defendant, after being first duly sworn, testified as follows:

Direct Examination by Hon. G. W. Chamlee:

My name is J. E. Pickett. I am teaching in the Negro High School at Decatur eighteen years. I graduated from State Teachers College at Montgomery in 1923 with the degree B. S. Before that I went to the Agricultural and Mechanical College of Alabama five years. I had been in the elementary school before I went to A. and M. eight years. I went three years to State School; in all I was in school sixteen years. I am employed by the City Board of Education, Decatur. I have a school of eight negro teachers, one man, seven women, all college graduates, and about 500 negro students. I stood examination before graduating college. I am pretty reasonable acquainted in Decatur and Morgan County.

I belong to a Presbyterian church about twenty years, a small church on West Cherry Street, and I try to live up to my church's requirements and Christian regulations. I am reasonably acquainted with many of the 140 names on the list filed by the witness Sykes, about fifty; they are male citizens living in Morgan County; they are intelligent men, and men that are esteemed in the community for their integrity, good character and sound judgment. No one is an habitual drunkard nor afflicted with a permanent disease or physical weakness which would render him unfit to discharge the duties of a juror. I do not know any that cannot read English or has been convicted of an offense involving moral turpitude. I know what is meant by moral turpitude and by esteem in the community for integrity. Those I know are freeholders or householders, heads of families, or own land. In the thirteen years I have lived in this county I have never seen a negro on a jury nor do I know any of these negroes whose names I have read as qualified on this list ever to have been summoned for jury duty. I have never been asked to perform jury duty.

I am non-partisan, am qualified to vote under the Alabama law and vote in elections. I haven't had an opportunity to refuse to serve on a jury. I would have served if the Jury Commission had sent for me. On this other attached list, marked J. J. Sykes, I know thirteen men. P. F. Ballentine, Sr., Rev. James Hyter, Robert Pates, Rev. James Carter, F. G. Dinkins, Dr. W. H. Sherrard, Oscar Whitaker, Edmond White, Counell Irvin, Charles Vaughn, J. J. Jackson, Prof. Breesling, Otis Johnson and P. F. Ballentine, Jr. I know about 75 per cent. on the list entitled H. J. Banks: Dr. N. E. Cashin, Dr. Frank Sykes, Dr. Newman Sykes, H. J. Banks, Henry Jackson, H. L. Murphy, Dr. T. R. Boulware, E. E. Jones, Prof. Counell Harris, Prof. J. E. Pickett, Prof. W. J. Wilson, Banks Patterson, F. K. Vaughn, William Frierson, J. H. Vaughn, Dallas Priest, R. L. Anderson, Frank Owens, Dr. A. O. Sheffey, Carl Sykes, J. J. Sykes, Dr. W. J. Woods, Clarence Pope, Rev. L. R. Womack, Percy Johnson, Aaron Orr, Clarence Bailey, Neal Sykes, Alonzo Harris, Luther Straughter, James Hill, Solomon Young, Will Garth, T. R. Bridges, T. W. McWilliams, W. W. Bough, J. N. Martin, William Gee, Rev. I. W. McGahee, Rev. Shy, George Reynolds, Rev. Pollard, Rev. W. A. Wilhite, Dan Matthews. They are all men over twenty-one living in Morgan County, generally reputed to be honest and intelligent men, and esteemed in the community for their integrity, good character and sound judgment, they are men of soberness, as far as I have been able to learn of them. I don't know any of them afflicted with a permanent disease of physical weakness such as to render him unfit to discharge the duties of a juror, or any ever convicted of a crime involving moral turpitude; they can read and write English and are all freeholders or householders of Morgan County.

Cross Examination by Attorney General Knight:

I do not know whether or not my name is in the jury box of Morgan County. I do not know whose names are in the jury box. I do not know whether those men are

on the jury rolls of Morgan County. I do not know whether or not they were considered for jury service. I do not know whether they are fitted for jury service or not.

ROBERT BRIDGEFORTH, witness called on behalf of the defendant, after being first duly sworn, testified as follows:

Direct Examination by Hon. G. W. Chamlee:

My name is Robert Bridgeforth. I am thirty-seven. I live at 402 Second Avenue North in Decatur. I have lived here thirty-seven years. I never saw a negro on a jury in Morgan County Circuit Court. I have never served on a jury. I operate a billiard parlor at 407 West Vine Street. I enlisted in the army in the World War in October, 1917. I was discharged April, 1918. I am acquainted with many people in Decatur and in this county. I know practically all the men whose names are on the Womack list headed by H. L. Murphy. They are male citizens of Morgan County, Alabama, generally reputed to be honest and intelligent men, esteemed in the community in which they live for their integrity, good character and sound judgment, over twenty-one and all under sixty-five, but I think Prof. Harris is over sixty-five; able to read English, not diseased or having any physical weakness such as to render them unfit to discharge the duties of a juror; not habitual drunkards; not ever convicted of any crime involving moral turpitude to my knowledge. I know all on the H. J. Banks' list headed by the name of Dr. N. E. Cashin. The persons on that list are male citizens of Morgan County, Alabama, generally reputed to be honest and intelligent men, esteemed in the community for their integrity, good character and sound judgment, over twenty-one and under sixty-five years of age; not habitual drunkards; not afflicted with a permanent disease or physical weakness which would render him unfit to discharge the duties

of a juror; not ever convicted of any offense involving moral turpitude, that I know of. They are all freeholders or householders in Morgan County, Alabama. I never knew of any one of them ever being called for jury duty in Morgan County, nor have I ever seen a negro on a jury in the Circuit Court or County Courts of Morgan County, Alabama.

Cross Examination by Attorney General Knight:

I knew all these people a good while, some I met around my place of business, not all. I run a negro pool room. I do not know whether I was ever considered for jury duty by the Jury Commissioners. I do not know whether or not my family relations is the reason my name is not in that box. I do not know whether or not those names on that list were considered by Mr. Falwell, Mr. Tomlinson and Mr. Brison for jury service. I do not know whether or not they are in the jury box of Morgan County.

GEORGE H. REYNOLDS, witness called on behalf of the defendant, after being first duly sworn, testified as follows:

Direct Examination by Hon. U. W. Chamlee:

My name is George H. Reynolds. I was born in Hills boro, Alabama, twelve miles from Decatur, in Lawrence County, adjoining Morgan County; I live in Decatur for the last two and one-half years; I am an undertaker for three years, a graduated embalmer. I went to Tuscumbia High School; A. and M. Institution, Normal, Alabama; Meuerhouse College, Atlanta, Georgia; Fisk University, Nashville, Tennessee, and Washington College of Embalming, Chicago, Illinois; in all eight years of schooling. I am well acquainted with the citizens, especially the negroes, in Morgan County. I know all on that list (identifying

long list included in this transcript of testimony of James J. Sykes). The men whose names are on that list are male citizens of Morgan County, generally reputed to be honest and intelligent men, as far as I know; esteemed in the community for their integrity, good character and sound judgment, as far as I know; all over twenty one and all under sixty five years of age, as far as I know; none that I know of are habitual drunkards or have ever been convicted of any offense involving moral turpitude or is afflicted with a permanent disease or physical weakness such as to render him unfit to discharge the duties of a juror; as far as I know, they can all read English and write; are all freeholders or householders, as far as I know. I know the people on this other list you hand me (referring to list set forth herein in transcript of testimony of James J. Sykes headed by name Dr. N. E. Cushing). They are male citizens of Morgan County, Alabama; generally reputed to be honest and intelligent men; esteemed in the community for their integrity, good character and sound judgment; over twenty one and, as far as I know, under sixty five years of age; not one that I know of is a habitual drunkard or has ever been convicted for any offense involving moral turpitude, or is afflicted with any disease or physical weakness such as to render him unfit to discharge the duties of a juror; they all read the English language and are freeholders or householders of Morgan County. I never saw any of them on a jury nor ever heard of any one of them being on a jury in Morgan County. I know all on the list you hand me (referring to list spread in record of transcript of testimony of James J. Sykes herein, headed by name I. Z. Moore). They are all male citizens of Morgan County, Alabama; generally reputed to be honest and intelligent men; esteemed in the community for their integrity, good character and sound judgment; over twenty-one; and, as far as I know, under sixty-five years of age; none that I know of is an habitual drunkard, nor afflicted with any permanent disease or physical weakness such as to render him unfit to discharge his duties as a juror, nor ever convicted of any felony or offense involving

moral turpitude; all can read English, as far as I know; all are freeholders or householders of Morgan County, Alabama. I never knew or heard of any one of them sitting on a jury in the Circuit Court of Morgan County, Alabama.

Cross Examination by Attorney General Knight:

I said I knew practically all of the names. I know Robert Bridgeforth; he keeps a pool room. He, like the others, is esteemed in his community as a man of sound judgment, as far as I know. I don't know whether the Jury Commission never considered him as a prospective juror; I do not know whether or not his name is in the jury box; I do not know whether or not I was ever considered as a qualified juror or whether or not the Jury Commission ever considered me and my qualifications for jury service. I have no way of telling whether they considered any of the other names on these lists you have identified. All are good men, as far as I know.

Court: I will give you two more witnesses along this line of testimony.

Mr. Leibowitz: We wish to put on the record we have a number of others along the same line, and we should like to put their names on the record.

Court: You can put on the record you offered to introduce those witnesses, the record can show this in the evidence; the Court stated that you may examine two more witnesses along this line and that would conclude the examination along this line.

W. J. WOOD, witness called on behalf of the defendant, after being first duly sworn, testified as follows:

Direct Examination by Hon. Samuel S. Leibowitz:

My name is Willis James Wood. I am forty-four, reside in Morgan County seventeen years, am married and a householder. I have real estate, pay taxes, vote since 1916.

Q. Before you became a voter you passed certain tests pertaining to the qualifications of a voter?

Attorney General Knight: We object.

Court: Sustain the objection.

Mr. Leibowitz: This is a question of intelligence. I except.

I have studied the Constitution of the United States. I was graduated from two institutions of learning, Tuskegee Institute of the State of Alabama and Mehery College. I took the prescribed literary course and brick masonry at Tuskegee, but did not receive a degree there. As part of that course I studied the arts and sciences, English, literature and history, and the general course given to a student in an academic college. At the other institution I studied all of the sciences pertaining to dental medicine, including medicine needed as preliminary training to dentistry. I passed an Alabama State examination; am licensed and have never been charged with malpractice nor removed from my profession by any board. I am a member of the First Baptist Church of Decatur, and have been for twenty-five years. I attend regularly and believe in and practice the teachings of the church. I am acquainted with the congregation church members and also engage in social relations with people of my race. As a part of my life I see citizens in this community and discuss with them the various affairs pertaining to the political life of the nation; we have our civic organization, the Negro

Civic League, of which I am a member. There civic questions are discussed, matters of the public welfare of the community and the nation. I take part in that discussion with other members of the organization. In private life I visit other folks, engage in the social activities of the community, and partake of the average and ordinary affairs in the life of the community. I am over twenty-one and under sixty-five, and a citizen. No man, so far as I know, has ever accused me or ever said I was a man of bad character. No one has ever challenged my sound judgment, my integrity as a man, my loyalty to the United States or the State of Alabama, or their constitutions and laws. I believe in supporting and have always believed in supporting the constitution and constitutional laws of the State. I have been a good, law-abiding citizen.

I do not drink to excess. I was never drunk. I am not afflicted with any permanent disease or physical weakness which would render me unfit to discharge the duties of a juror. In my opinion to be on a jury—you would expect a juror to be able to judge impartially by the evidence given, that would be my judgment; listen to the Judge; I wouldn't know what he was supposed to do in the jury room; bring in a verdict if they agree, I suppose; discuss the evidence with the jurors in the jury room. I have never been convicted of any offense whatsoever. I know how to read and write English, read the newspapers, and follow the events of the day. I think I am as well up on the events of the day as the average, ordinary citizen, as to what is going on in the nation, State and community. In all the years that I have been a resident of Morgan County I have never been summoned to appear for service as a juror nor have I ever served as a juror.

I am seldom around the court house, but I have been in court as a spectator and have seen it in operation trying jury cases. I have never seen a colored man of African descent on a jury in Morgan County, nor heard of any. I have never stated to the Jury Commissioners or ever communicated with any jury official in charge of the selec-

tion of jurors that I would not serve on a jury if called. I have never refused to do my duty as a juror. I have never been invited to appear before any board or any member of any board, or any of its agents, servants or employees. No one connected with the selection of the jury roll ever examined me with reference to my qualifications as a juror, nor do I know any negro that has ever been invited to appear for or undergone such an examination.

Q. As a matter of truth, and as a matter of honesty, and as a matter of straightforwardness, has any negro ever been selected as a juror in Morgan County?

Attorney General Knight: We object.
Court. Sustain the objection.
Mr. Leibowitz: I except.

I am a member in good standing of the Masonic fraternity and Independent Order of Elks of the World; of the Masons about twenty years and the Elks about ten. I am Master of the lodge now, and Exalted Ruler of the Elks' Lodge, colored people. I don't know that I have ever seen the four lists you hand me. The names I don't know are John Dillon, Prof. P. C. Nick, and I don't seem to know Billy Baker. The others are all negro male citizens of Morgan County, generally reputed to be honest and intelligent men, esteemed in their community for their integrity, good character and sound judgment; none under twenty-one nor over sixty-five; none an habitual drunkard, or afflicted with a permanent disease or physical weakness which would render him unfit to discharge the duties of a juror; if there is any person there who cannot read English he is a householder or freeholder; and none ever been convicted of any offense involving moral turpitude, as far as I know.

I am a negro. I was commissioned as First Lieutenant, General Reserves, United States Army, during the World War, but I never was called into service, and never have

been discharged. I believe in and support the Constitution and the laws of the country and defend its flag. I have always maintained that feeling toward our country, always been loyal to it, and to the State of Alabama and its institutions, and I have always supported the Constitution and laws of Alabama and always intend to.

Cross Examination by Attorney General Knight:

I live in Decatur. A mixture of white and colored people comprise the community. I identified those names and said I had never served on a jury; I have never served on a Federal jury. I know the Jury Commissioners of this county. I know there should be a Jury Commission for this county. I do not know whether or not the Commission examined or considered these names identified as in my estimation people of good character and esteem. I do not know whether these names are in the jury box.

DR. N. M. SYKES, witness called on behalf of the defendant, after being first duly sworn, testified as follows:

Direct Examination by Hon. Samuel S. Leibowitz:

My name is Newman M. Sykes. I am forty-five years old, a citizen of Morgan County, and a resident of Decatur. I am a duly licensed physician in the State of Illinois; I am medical director for the Liberty Bell Insurance Co. in Alabama. I am a graduate physician. I have never been removed as such by any authority, nor ever been charged with any professional misconduct. I was born and raised here in Decatur. I am not married. No one that I know of has ever charged me with dishonesty or ever challenged my integrity, good character or sound judgment. I am a graduate of Decatur public school; preparatory department, Shaw University, Raleigh, North Carolina, a Bachelor of Science of Fisk University, Nash-

ville, Tennessee; a graduate of the University of Illinois Medical Department, where I received my medical degree. I passed the State medical examination of the State of Illinois. Here I am a medical director; I discuss treatment. In Illinois I was a county physician for St. Clare County for nine years, appointed by the Commissioners. I am not an habitual drunkard, not now afflicted nor ever afflicted with a permanent disease or physical weakness that would render me unfit to discharge the duties of a juror. I am familiar with the qualifications of a juror, and I believe with their duties and obligations. I can read English; I have never been convicted of any offense involving moral turpitude, nor of any offense whatsoever. I have never been selected as a juror in the State of Alabama, nor ever been summoned to serve on a jury. I have frequently attended court in Morgan County while jury cases were being tried, both criminal and civil. I have never seen a negro on the jury in the County of Morgan. There are hundreds of negroes between the ages of twenty-one and sixty-five. I am a member of the Masons and Pythians, of school fraternities, of the local civic organization. There we transact general civic affairs, discuss the welfare, peace and love and morality of the community. I take part in those discussions.

Q. Aside from your professional duties; by the way, just describe what your professional duties are.

Attorney General Knight: We object.
Court: Sustain the objection.
Mr. Leibowitz: I except.

At all times I have to engage in social intercourse, discuss the events of the day, political, civic, social and religious. I attend Baptist Church religiously. I visit them all, giving health lectures. I believe to a large extent in the principles of the Christian religion, believe in morality, in upholding the Constitution of the State of Alabama and the United States of America. I never be-

lieved in any ideas to assail the foundation of our Government. I was on the reserve list in the World War, engaged in hospital work, subject to call. I was a commissioned officer of the rank of Lieutenant, in the Medical Corps, and I have never received any official notification I wasn't on the call list, so am not discharged.

Of course, I have never served on a jury. In my attendance in the courts I have never seen a negro on the jury. I hear say negroes were on Morgan County juries prior to the enactment of the disfranchisement law in 1901. Since 1901 I have never heard of any negro ever having served on a jury in Morgan County. I helped prepare the written one of these four lists; I know what is on that one; on the other three lists I believe I know all but H. Swift and Billy Baker. They are all colored, male citizens of this county, generally reputed to be honest and intelligent men, esteemed in the community for their integrity, good character and sound judgment, over twenty-one, and, with the possible exception of two or three, under sixty-five. None are habitual drunkards nor afflicted with any permanent disease or physical weakness that would render them unfit to discharge the duties of good jurors, to my knowledge. I am quite sure they can read English; the majority of these own real estate and are householders. As far as I know, none of them has ever been convicted of any offense involving moral turpitude. No one connected with the machinery that has in charge the selection of men for the jury roll ever put me through an examination, nor have I ever heard of any other negro being put through such an examination, or of any man on those lists being put through any such examination, with the view to finding out whether he was qualified to serve as a juror. I have never said to anybody I wouldn't serve as a juror. I think it is the duty of a good citizen to serve willingly, faithfully and honestly, and with all conscientiousness, if selected. I would do my duty if I were selected. I feel I am qualified to serve as a juryman.

Q. And if you are excluded as a juryman you feel it would be only because of your race and color?

Attorney General Knight: We object.
Court: Sustain the objection.
Mr. Leibowitz: I except.

I can state with reasonable certainty there are many, many others qualified that I could add to that list, none of whom has ever been called or served on a jury.

Cross Examination by Attorney General Knight:

I know about five Will Garths; the Will Garth on the list I helped prepare is the Will Garth that chauffered for the Misses Dancey sisters; he is not the one sentenced to the penitentiary. I never served on a Federal Jury, when I was in Chicago I was called for jury duty, but I didn't serve. I do not know the Jury Commissioners here. I have no knowledge of whether they considered the people whose names are on that list or not. I have no knowledge of whether they were examined and deemed not to possess the qualifications I think they possess. I have no way of knowing whether these names are on the county jury rolls.

Re-direct Examination by Hon. Samuel S. Leibowitz:

Q. Knowing all of these hundreds of negroes, in Morgan County, possessing all of these qualifications, if it would appear their names have never been on the jury roll, or they have never been called for jury duty, would you consider that a mere coincidence, or would you consider they have been kept from serving as jurors by reason of their race and color?

Attorney General Knight: We object.
Court: Sustain the objection.
Mr. Leibowitz: I except.

Mr. Leibowitz: I want to state for the record, we are prepared to furnish proof from competent, reputable witnesses in the number of about 400 to substantiate the allegations of the petition pertaining to the qualifications of negroes in Morgan County. We are ready to submit these persons named in these lists for the inspection of the Court and for the examination of the Court, to whatever examination the Attorney General of the great State of Alabama would wish to put them with a view to ascertaining the questions as to whether or not any single thing can be indicated or pointed to by either the Court or the Attorney General which would disqualify these citizens of this county from service of jury duty. If your Honor would care to hear them we are prepared to produce them.

Court: They are witnesses whose evidence would be of similar import to the witnesses introduced?

Mr. Leibowitz: Yes, sir, but we will offer them to your Honor, and to the Attorney General of the State, without any restrictions whatsoever, to inquire of them by legal evidence or any other manner you choose, with no objections on our part, as to whether or not those people are qualified to sit on the juries. We contend they are. If your Honor feels we have gone far enough and shouldn't go any further along that line I will note my exception. I offer this list in evidence, I want to put it in the record that this list was left with Clerk Green with the request that subpoenas be issued, and offer this list in evidence as proposed witnesses, and may that list be marked.

[Lists of names presented in evidence are fully set forth in this transcript, one in the testimony of L. R. Womack, the other three in the testimony of James J. Sykes, *supra*.]

Attorney General Knight: I think the record should also show when he offered to produce these

other 400, at what stage of the proceedings he offered to produce them.

Mr. Leibowitz: I am offering to produce pronto within a few minutes.

Attorney General Knight: Have subpoenas been issued for them?

Mr. Leibowitz: We requested the Clerk to issue the subpoenas this morning, and we can produce them without subpoenas. The Clerk was handed this memorandum filed by George W. Chamlee: "Clerk of the Circuit Court. Please file this list of witnesses and issue subpoenas for all of the above and foregoing named witnesses on these four pages to come to Court March 30, 1933, on behalf of the defendant, Haywood Patterson."

Court: The Clerk didn't refuse to issue them?

Mr. Leibowitz: No, sir, he merely put them on the record in view of your Honor's ruling.

Court: The Court holds that the evidence is all of cumulative nature and of the character that has already been introduced, and the Court would not care to hear it.

Mr. Leibowitz: I wish to note my exception.

Mr. Leibowitz: I want to state for the record I am calling this witness because I am constrained to call him to identify the jury roll and the persons on that jury roll, and I call him for no other purpose.

J. A. TIDWELL, witness called on behalf of the defendant, after being first duly sworn, testified as follows:

Direct Examination by Hon. Samuel S. Leibowitz:

I am a member of the Jury Board of Morgan County, Alabama. My associates are J. N. Tomlinson and W. J. Brisco, residents of Morgan County. We were appointed March, 1931, by Governor Miller. Prior to that I held no

official position in this county. With the other Board members I performed the duties of a Jury Commissioner, and in January and February, this year, as in 1932 and 1931, made up a list of the names of citizens of Morgan County, known under the statute as the jury roll. I am acquainted with the big red book Sheriff Davis just brought into court, marked on the back, "Jury Roll, 1931, Morgan County." It was typewritten by the clerk, Mrs. J. E. Wilks, a resident of Decatur, at our order. In February, my recollection is, was the last time the book was written into. Whatever was entered in that book was entered by order of the Jury Commissioners. It contains the jury roll for 1932 and 1933. The 1931 jury roll and the others, on loose leaves, have to be taken out because there isn't enough room. Pages are numbered consecutively; if removed, you can tell which are missing. No pages are missing from the roll.

[Jury roll for 1933 offered in evidence.]

The jury in this case, the Haywood Patterson case, was drawn from the jury roll of 1933. The names in the box which Judge Horton set on the bench and from which he drew the names put in that box were taken from the list of 1933. That is the list from which Judge Horton drew that jury of 100 men. They came from this 1933 list in this red book.

[Offered in evidence.]

I am familiar with the duties of my office, with Section 14, which pertains to the jury, and which requires me to put on that jury roll all male citizens possessing the qualifications, who are reputed for their character, intelligence and sound judgment. I am required to put them on that roll, the names of all male citizens possessing the qualifications, and I have endeavored to do that, as far as I know. I do not know these men personally, not all of them. Sometimes we go into various precincts of the county to people we know to be intelligent. On this page here with the letter "A," I know E. C. Aldridge. "Cull" next to his name is a nickname. The names on this first page are in beat No. 1 in Decatur. In beat No. 1 I inquire as to the

qualifications of these men. I talked to a good many people. I couldn't tell right off who. I don't know if they are all white citizens.

Q. Can you give us the names of any person from whom you got that list of names there, who you consulted?

Attorney General Knight: We object.

Court: Sustain the objection.

Attorney General Knight: He has got no right to grill him as to how he obtained the information on which he exercises his discretion.

I cannot point to any colored citizen on that particular page. I don't know whether they are white, black or yellow. I don't know all under letter "A" in the various beats you name. I know some. The names I know in the book are all names of white men.

CAPTAIN JOE BURLESON, witness called on behalf of the defendant, after being first duly sworn, testified as follows:

Direct Examination by Hon. Samuel S. Leibowitz:

My name is Joe W. Burleson. I am captain in the National Guards of the State of Alabama, on duty in the court house pursuant to the orders of Governor Miller. My home town is Hartselle. I have lived there a good many years. I am familiar with some of the residents of the Town of Hartselle.

Court: I will let you ask him how many men he knows and whether he knows they are white or colored.

Q. Will you give us the names of those you don't know?

Court: Sustain the objection to that.

Mr. Leibowitz: We except. You see, your Honor, it is not a question of proportion I am seeking to prove, I am seeking to demonstrate there are no negroes on that list, I would like to have that clearly understood.

Court: That would be interminable proof and I think the facts testified to would be matter which the Court would consider.

Court: I will limit this to the present year, the present jury roll.

Mr. Leibowitz: Your Honor will limit the proof as to that in every respect?

Court: Yes, sir.

Mr. Leibowitz: In other words, if I understand your Honor's ruling, your Honor will take no proof as to any prior years?

Court: Yes, sir.

Mr. Leibowitz: I except.

Court: In other words, you are offering now to show a jury roll prior to the jury roll from which the cards were obtained and put in the box, and the Court sustains the objection to going into jury rolls or asking questions prior to that.

Mr. Leibowitz: I except. In order to state my position for the record, I desire to offer the jury roll for 1932 in evidence for the purpose of proving, which I am confident of being able to do beyond a shadow of doubt, that there is not a single name on that entire jury roll for 1932 of any colored person or negro. The purpose only is to show the custom in the past years the same as in the year 1933, which is an arbitrary exclusion and violation of the Fourteenth Amendment of the United States Constitution, and I note my exception to your Honor's ruling prohibiting me from offering that proof.

Court: Very well.

Cross Examination by Attorney General Knight:

I don't know all of the people in this country, I so stated, I only knew a few people in comparison with the number on the roll.

Q. And you didn't know their color? A. Those I didn't know, naturally, I didn't know their color.

Mr. Leibowitz: We object on the ground he objected to my asking the names specifically so they might be identified, and now he is shutting out the proof I sought to offer.

Court: I will let him state he doesn't know the others.

SHERIFF BUD DAVIS, witness called on behalf of the defendant, after being first duly sworn, testified as follows:

Direct Examination by Hon. G. W. Chamlee:

Court: Gentlemen, if you are going to ask the same character of questions it will be limited in the same way.

I am the sheriff of Morgan County.

[The witness scanned the jury roll, giving the number he knew, but not the names, in all the beats into which Morgan County is divided on the jury roll.]

After looking over every single name on that jury roll, from A to Z, I don't know as I could point out any single negro on it. I don't recognize any negro on that jury roll offhand; I wouldn't know who all was on it.

[The defense filed the following certificate of the Secretary of State giving the census of Jackson and Morgan Counties:]

STATE OF ALABAMA }
MONTGOMERY COUNTY }

I, MRS. MARIE B. OWEN, Director of the Alabama State Department of Archives and History, do hereby certify that the said Department is designated as an official depository for all government documents, including the reports of the United States Census Bureau, and further certify that the 15th CENSUS OF THE UNITED STATES 1930, POPULATION VOLUME III - PART 1, REPORTS BY STATES ALABAMA-MISSOURI, COMPOSITION AND CHARACTERISTICS FOR COUNTIES, CITIES AND TOWNSHIPS, on file and of record in said Department, at the Capitol, in the City of Montgomery, pages 130 and 135 respectively, discloses the following information:

	Total Population	Males	Females	Color	
				Whites	Negro
Jackson County	36,881	18,801	18,080	34,192	2,688
Morgan County	46,176	23,122	23,054	37,865	8,311

(Signed) MARIE B. OWEN,
Director, Alabama State Department of
Archives and History.

Subscribed and sworn to before me
this 22nd day of March, 1933.

(Signed) MRS. VONCILE B. SAYERS,
Notary Public.

Montgomery County, Alabama.

THE STATE OF ALABAMA

DEPARTMENT OF STATE

I, PETE B. JARMAN, JR., Secretary of State of the State of Alabama, having custody of the Great and Principal Seal of said State, do hereby certify that, as disclosed by the records of this office Mrs. Vonelle B. Sayers was, on October 22, 1931, duly commissioned as a Notary Public in and for the county of Montgomery for a term of four years. I further certify that by virtue of such appointment she is authorized by law to administer oaths, take acknowledgments and proofs of instrument in writing, and I further certify that her signature to the instrument hereto attached is, to the best of my knowledge, information and belief, genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State, at the Capitol in the City of Montgomery, this 22nd day of March, One Thousand Nine Hundred and Thirty-three.

(Signed) PETE B. JARMAN, JR.,
Secretary of State.

(Seal)

J. A. TIDWELL, witness recalled by the State.

Direct Examination by Attorney General Knight:

I am a member of the Jury Board of Morgan County. Within my power I secured, as far as I know, a list of all male citizens of Morgan County.

Q. Did you secure that list after a consideration of their race or color?

Mr. Leibowitz: I object because it is a self serving declaration.

A. No, sir.

Attorney General Knight: Self-serving, he is informing the Court whether or not he systematically excluded jurors.

Court: Overrule the objection.

Mr. Leibowitz: I except and object on the further ground the list speaks for itself.

Court: The law requires of the Jury Board the name of every male citizen of the County over twenty-one and under sixty-five, and the occupation, and so forth, should be obtained.

A. This list of names I obtained from available sources of information; it included all male citizens between the ages of twenty-one and sixty-five.

Q. Did you obtain that—you have stated you did not obtain that list after the consideration of the race or color of any male citizen? A. No, sir, we never considered the race or color.

Mr. Leibowitz: We move to strike that out.

Court: Motion denied.

Mr. Leibowitz: I except.

From that list we compiled the jury roll. We did not consider race or color of any person put on that jury roll.

Q. As a matter of fact, you don't know of your personal knowledge every person on the jury roll?

Mr. Leibowitz: We object to leading.
Court: Overrule the objection.

A. No, sir. I could not open that book now and tell whether or not every person on that jury roll is white or black.

Q. You did not select for jury service with the idea of discriminating against them on account of their race or color? A. No, sir.

Mr. Leibowitz: I object.
Court: Overrule the objection.
Mr. Leibowitz: I except.

Persons not on that jury roll were not excluded on account of their race or color. I know the qualifications under the statute. I placed on the jury roll as far as I was able and so far as I had information the names of persons possessing such qualifications. I was present in the deliberations of the jury board. When the roll was compiled, all three of us were together. I can't say we considered each person on this Womack list for jury service, but every one that I see here looks familiar.

Q. To the best of your knowledge and belief, will you state you considered those people? A. Yes, sir.

Mr. Leibowitz: I object to leading the witness.

To the best of my knowledge and belief we considered the persons on the J. J. Sykes list. To the best of my knowledge and belief we examined the names of the men on the list headed by Dr. N. E. Cashin for jury service. They were not excluded on account of their race or color. To the best of my information and belief we considered the names of the persons on the H. J. Banks list for jury service. The names on all the lists you showed me were examined by the Jury Board, to the best of my recollection.

Q. Sitting officially, were they not? A. Yes, sir.

Q. In your deliberations as a Jury Board? A. Yes, sir.

Q. For the purpose of selecting jurors for Morgan County?

Mr. Leibowitz: I object to the Attorney General testifying for the witness.

Court: Overrule the objection.

Q. You stated your Board officially and in a body as a Board considered them?

Mr. Leibowitz: I object.

Court: What is the question?

Attorney General Knight: I just wanted him to reiterate that the Board had officially considered them.

Cross Examination by Hon. Samuel S. Leibowitz:

I am testifying not from my own knowledge but on information and belief.

Q. None of the testimony you gave in answer to Attorney General Knight's questions has been of your own knowledge, yes or no? A. We were——

Q. Just answer the question.

Court: Sustain the objection.

By information and belief is meant when I go out and get information on different parties, I, of course—whatever information I have—that is, I don't know it personally, but I believe when I go to the best citizens and get that information that it is correct. I went to the best citizens and got information with reference to each of the names on those four lists. I haven't got the list of such citizens who gave such information; we destroyed that list when we got through. We qualified those we qualified and put the names in the box. We asked various citizens; we talked to a good many colored citizens. I don't know

Dr. N. E. Cashin personally. I know of him. He is a negro doctor. I don't know if he is a reputable physician in town; I know nothing about him. I don't know Dr. F. J. Sykes. I do know Dr. D. V. Darden. I have seen him and talked to him. I served a citation on him for a license, is my recollection. I know Dr. W. H. Sherrod personally. I think I served a citation on him when I was in the license department. I know Dr. W. J. Wood. I think I have been in his office and served a citation on him. I don't know Dr. T. R. Boalware. I think I have seen Prof. W. J. Wilson. I don't know him well. I don't know J. E. Pickett, the school teacher, nor Preacher Womack. I don't know John Watkins or J. A. McGahee, W. A. Wilhite, Dilliard Williams, Preacher Newby, George Eldridge or U. G. Draper. I don't recollect going to any particular preacher in this county to consult him with reference to men of his race when considering people to serve for jury duty, nor to any colored civic league in this town. I do not know of a colored Masonic Order here or any official connected with the colored Masonic Order. I do not know any of the officials connected with the colored Lodge of Elks. I am not an Elk. I didn't know they had a colored Elk Lodge here. I didn't consult with the officials of either one of those lodges. I don't know as I can name any particular colored person of Morgan County whom I consulted and asked questions about the different persons of the negro race with the view of ascertaining whether there were any qualified negroes to serve on a jury; I don't know that I have. I don't know whom I consider the leading negro citizen of Morgan County.

Q. Can you give me the name of the man who in your estimation you consider the most intelligent, the most upright, the man of the most sound judgment, the finest citizen among the negroes you know?

Attorney General Knight: We object as immaterial and irrelevant.

Court: Sustain the objection.

Mr. Leibowitz: I except.

I do not know of any negro in Morgan County over twenty-one and under sixty-five who is generally reputed to be honest and intelligent and who is esteemed in the community for his integrity, good character and sound judgment, who is not an habitual drunkard, who isn't afflicted with a permanent disease or physical weakness which would render him unfit to discharge the duties of a juror, and who can read English, and who has never been convicted of a crime involving moral turpitude.

On the list headed by the name of Dr. Cashin I know Robert Bridgeforth personally about two years and Jerry Elliott. I have spoken to Bridgeforth. I had to check up on his place to see whether he had a license for the business he was operating; he did have. That is as far as I know about him from my personal contact. This man Elliott, I just served a citation on for a car tag or truck tag; that is all I know about him. Outside of these two, I did not see any on the list I recognized.

On this Womack list I know N. E. Cashin and Frank Sykes there when I see them. I never knew who Sykes was until the other day I went down there to serve a citation on him for an embalmer's license; and Tom Garth, Hess Thompson, Will Irwin, J. J. Sykes, Stanley Basham, Oscar Whittaker, and I think I have seen this A. O. Sheffey. I only know them by sight, not personally; I know them when I see them; I am not intimate with them. I have talked to J. J. Sykes. He is a pretty intelligent fellow. I don't know whether he is educated or not; I haven't ever seen his certificate. He is over twenty-one; I don't know whether he is sixty-five. I don't know about his being a college graduate. I don't know anything against his character. I have never known of him ever being convicted of any crime. I have never seen him drunk. He has no mental troubles; he has got a crippled leg. I don't know anything against his integrity. I never heard him read; I don't say he can't read. The qualifications of a juror, as far as I remember, are he has to be a man that is honest; he has got to be honest; a man of integrity,

esteemed in the community in which he lives for his sound judgment and so on. He has got to be a man over twenty-one and under sixty-five years of age. If he cannot read and write and possesses the other qualifications my recollections is the law says we may put him on the jury roll; we don't have to; it says we may. I don't remember the other qualifications. I can't call them off. There is a qualification with reference to conviction for an offense, I remember, involving moral turpitude. I know what is meant by moral turpitude. He must be a man of good morals. I think if he has been convicted of any offense it involves moral turpitude. If he has been convicted of speeding it would affect his morals; not if he was convicted for not having a license on his car. Running a car without license would be a violation of the law; I would exclude from jury duty for that.

Q. Suppose a fellow parked his car in a restricted zone against the law, would that be moral to your mind? A. I don't think that would amount to anything.

Attorney General Knight: We object.

Court: Sustain the objection.

Mr. Leibowitz: I except.

I don't know who all we had on our list; we keep those on the list that are qualified and those we do not qualify we put them off the list. I couldn't say whether J. J. Sykes' name is on that jury roll.

Q. We can ascertain his name by looking over the S's; it will just take a second.

Court: It is before the Court.

Attorney General Knight: The discretion of the Jury Commission cannot be impeached by cross examination as to the qualifications of a particular person.

Mr. Leibowitz: In respect to the Attorney General's statement to your Honor, I want to say if

the action of the Jury Commissioners is arbitrary or unwarranted, then it ceases to be a discretion.

Court: I have permitted—

Mr. Leibowitz: I am stating now that J. J. Sykes isn't on this jury roll, and the jury roll is before the Court.

Court: He said he didn't know.

Mr. Leibowitz: I want to let him look at it.

Court: The Court knows that, whether his name is there or not.

Q. The name of J. J. Sykes is not on that jury roll; can you ascribe any reason for the disqualification of J. J. Sykes?

Attorney General Knight: We object.

Court: Sustain the objection.

Mr. Leibowitz: I except.

Q. You didn't exclude J. J. Sykes by reason of any questions I asked you before?

Attorney General Knight: We object.

Court: Sustain the objection.

Mr. Leibowitz: I except.

Q. If it should appear that J. J. Sykes met every requirement of the law we have been discussing here, pertaining to the qualifications of jurors, and you failed, neglected, refused and omitted to place his name on the jury roll, can you ascribe any reason for such failure, neglect, refusal and omission?

Attorney General Knight: We object.

Court: Sustain the objection.

Mr. Leibowitz: I except, and I want to add to it, except he was a member of the negro race.

Attorney General Knight: We object.

Court: Sustain the objection.
Mr. Leibowitz: I except.

[When the above question was read from a transcript of the testimony taken on the hearing before Judge Horton on the motion to quash the venire, the Judge trying the case at bar held that the question was legal and informed the defense counsel they could now call the said witness Tidwell for the purpose of having him to answer this question and Tidwell was recalled in this trial at bar and answered the question as shown at page 353 of this bill of exceptions. He was called solely to answer this question in the former testimony on the motion.]

I know Tom Garth when I see him, not as well as I know J. J. Sykes. I went there and served a citation on him; that is all I know about him. I know Thompson when I see him; I went there to check up on his embalmer's license. I know Will Irwin only when I see him. I know Stanley Basham when I see him. I know he is bootlegging.

Mr. Leibowitz: I move to strike that out.
Witness: He has been convicted in the City Court for bootlegging.
(No ruling.)

I have been there and served a citation on him for a cafe license. I think the city record will show he has been convicted several times. Oscar Whittaker I know only when I see him. I went there and served a citation on him for a car tag. I do not know A. O. Sheffey. Doctors are exempt from jury duty if they claim it. They and preachers are exempted and not put on the list. Only those on the list I have mentioned is all I know.

On the H. J. Banks list I know Prof. W. J. Wilson when I see him; no one else. I don't know any names on the J. J. Sykes list other than I mentioned.

Q. Mr. Tidwell, have you ever intentionally put any negro on the jury roll? A. Intentionally?

Q. Yes.

Attorney General Knight: We object; he isn't supposed to put them on intentionally or take them off intentionally.

Court: Sustain the objection.

I am not in court very much, but I have never seen a negro serve on a jury; never heard of one.

Q. Let me ask you this: Can you give us any name of any particular individual who you talked to about these men on those lists with reference to ascertaining their qualifications?

Attorney General Knight: We object.

Court: Sustain the objection.

The names on the jury rolls were selected from a list. We took every male citizen between the age of twenty-one and sixty-five. We got it from the poll list, the City Directory, the telephone directory, and every available place, every where else we could. Outside of the telephone book, the poll list and the City Directory, we talked with different people, white and black. I don't remember any black person I talked to to get those names; I can't name any. He didn't furnish me with a list of the black residents. The black residents were not excluded from the general list.

Q. Did you get a colored list? A. We had—

Court: He already stated he had a general list, sustain the objection.

Mr. Leibowitz: I except.

I am Deputy License Inspector, besides Jury Commissioner. I have served on a jury, but not since I have been a member of the Jury Board.

Q. Do you know the particular kind of sound judgment a man must possess to serve on a jury?

Attorney General Knight: We object.
Court: Sustain the objection.
Mr. Leibowitz: I except.

Q. Can you personally assign any reason why any of the names you have read, with the possible exception of one man whom you say was a bootlegger, as to why their names do not appear on the jury roll?

Attorney General Knight: We object.
Ruling by Judge Callahan: Objection is overruled, and you may put Mr. Tidwell on the stand to answer that question.

Q. Can you state to this Court the name of any person, or can you furnish this Court any information as to the names of those prospective jurors, of the negroes on those lists, that would disqualify them in your opinion by reason of the provisions of the section I referred to?

Attorney General Knight: We object.
Court: Sustain the objection.

Q. All we have here is your bare statement you didn't exclude any negro by reason of his race; that is all you have brought here?

Attorney General Knight: We object.
Court: Sustain the objection.
Mr. Leibowitz: I except.

Q. You told us just about how carefully you examined them as to qualifications, those names on those lists; do you want to add something to it?

Attorney General Knight: We object.
Court: Sustain the objection.
Mr. Leibowitz: I except.

Q. With reference specifically to those four lists, did you apply any other test or take any other means to ascertain whether they were qualified for jury service?

Attorney General Knight: We object.
Court: Sustain the objection.
Mr. Leibowitz: I except.

I actually saw those names on the list made up from the poll list. I couldn't say about how many names were on the poll list, one, five, ten, I don't know. I don't remember the names.

Q. If you don't know the individual the name means nothing to you?

Attorney General Knight: We object.
Court: Sustain the objection.

The name of James Johnson on that list means nothing to me, just a name. The names mean nothing to me if I don't know the individuals.

Q. If that is so, how can you tell, how can you come here and swear before this Court you considered those names when the names mean absolutely nothing to you, no more than John Doe, or Richard Roe, or any other name?

Attorney General Knight: We object.
Court: Sustain the objection.
Mr. Leibowitz: I except.

Q. Can you explain that any more fully?

Attorney General Knight: We object.
Court: Sustain the objection.
Mr. Leibowitz: I except.

We have destroyed our list. The names don't amount to nothing to me.

Q. You can't swear one way or the other as to those particular names?

Attorney General Knight: We object.
Court: Sustain the objection.
Mr. Leibowitz: I except.

[This completed the evidence taken on the former hearing on similar motion. This evidence had been read to the Court, both questions and answers, but the same is not fully set out in this bill of exceptions. It is transcribed herein in narrative and abridged form instead of copying the whole of the transcript of the evidence on former trial. After reading the former testimony herein referred to, the Court allowed defendant to call J. A. Tidwell, to have him answer the question propounded to him on former hearing on the motion and to which Judge Horton had sustained an objection by the State. Thereupon the following occurred.]

J. A. TIDWELL, being sworn, testified:

Q. Mr. Tidwell, on the former trial you were asked a question which was objected to by the State, and the objection sustained by the Court. This Court has ruled that you answer the question. The question is this: "The name of J. J. Sykes is not on that jury roll, can you ascribe any reason for the disqualification of J. J. Sykes?" A. He is very badly crippled and when we was discussing his case, his fitness for jury service, we thought that his condition was such that he wasn't physically able for jury duty, and we had other information which we thought might affect his character so as to bar him from the jury.

Mr. Brodsky: May I go into that further?
The Court: No, sir, that's all you asked for.
Mr. Brodsky: Exception to your Honor's ruling that I may not go further on that point.

The Court did not deny defendants a right to call and examine this witness on this motion.

This was all the evidence on behalf of defendant on motion to quash.

WHEREUPON, the State offered in evidence the following affidavits:

STATE OF ALABAMA }
MORGAN COUNTY }

Before me, J. H. GREEN, Circuit Clerk in and for said State and County personally appeared W. J. BRISCOE, who being duly sworn, deposes and says that he is a member of the jury board of Morgan County, Alabama, and has been for several years. That he was one of three members of the present jury board which selected those residents of Morgan County whose names were placed on the jury roll and in the jury box from which the venire was drawn to try the case of the State of Alabama vs. Haywood Patterson. He further states that the clerk of the jury board, in pursuant to law, submitted to the jury board of which affiant is a member, a list containing the name of every male citizen of Morgan County, Alabama, between the ages of twenty-one and sixty-five years of age, which list, so far as affiant knows or can ascertain, was complete and correct. That from this list the jury board selected those persons who, in their opinion, possessed the qualifications prescribed by law. That in the selection of those persons whose names appear on the jury roll and in the jury box, the members of the jury board did not exclude any person because of race or color, but considered every man whose name was placed on the list submitted to them by the clerk of the jury board, and only excluded those persons who, in their judgment, did not possess the qualifications prescribed by statute, and further states that their judgment was not arbitrarily arrived at, an inquiry being

made wherever practical as to the qualifications of those persons whose names appeared on the list submitted to them by the jury clerk. Affiant further states that he cannot definitely state whether or not the names of colored men appear on the jury roll or in the jury box of Morgan County, inasmuch as it is impossible for him to know each person personally.

W. J. BRISCOE,
Affiant.

Sworn and subscribed to before me
this the 23 day of November, 1933.

J. H. GREEN,
Circuit Clerk.

STATE OF ALABAMA }
MORGAN COUNTY }

Before me, J. H. GREEN, Circuit Clerk in and for said State and County personally appeared JOHN W. TOMLINSON, who being duly sworn, deposes and says that he is a member of the jury board of Morgan County, Alabama, and has been for several years. That he was one of three members of the present jury board which selected those residents of Morgan County whose names were placed on the jury roll and in the jury box from which the venire was drawn to try the case of the State of Alabama vs. Haywood Patterson. He further states that the clerk of the jury board in pursuant to law submitted to the jury board of which affiant is a member, a list containing the name of every male citizen of Morgan County, Alabama, between the ages of twenty-one and sixty-five years of age, which list, so far as affiant knows or can ascertain, is complete and correct. That from this list the jury board selected those persons, who, in their opinion, possessed the qualifications prescribed by law. That in the selection of those persons whose names appear on the jury roll and in the jury box, the members of the jury board did not

exclude any person because of race or color, but considered every man whose name was placed on the list submitted to them by the clerk of the jury board, and only excluded those persons who, in their judgment, did not possess the qualifications prescribed by statute, and further states that their judgment was not arbitrarily arrived at, an inquiry being made wherever practical as to the qualifications of those persons whose names appeared on the list submitted to them by the jury clerk. Affiant further states that he cannot definitely state whether or not the names of colored men appear on the jury roll or in the jury box of Morgan County, inasmuch as it is impossible for him to know each person personally.

JOHN W. TOMLINSON,
Affiant.

Sworn and subscribed to before me
this the 23 day of November, 1933.

J. H. GREEN,
Circuit Clerk.

THIS WAS ALL THE EVIDENCE.

COURT'S OPINION.

Gentlemen, on this motion there cannot be very well but two questions involved. The first would be whether or not the laws that are enacted by the State of Alabama with reference to the qualifications of jurors, and the method of obtaining information and preparing the rolls and placing the names of the parties in the jury box are violative of the Federal Constitution. That is the first question, as I understand the motion. The next is that in the administration of that law, the officers of the State of Alabama, to whom that duty is assigned, so administered that law as to deny to the negro the right of admission on the jury rolls, and putting their names in the jury box. That is the question now under consideration?

Mr. Brodsky: Yes, sir.

The Court: So that is to be settled by evidence as to whether they have so administered that law as to deny the right of the negro on the jury roll or in the jury box, because, and solely because, of his color or race. Now, I tried to follow the evidence as closely as I could. The first witness, as I recall—I may be wrong about that—but, anyhow, he testified, and that was Mr. Green, the Clerk of the Court, that he had been Clerk of the Court for four years or more, and had also been Clerk in the Probate Court, who said in substance, the vital part of it, that during his experience and observation he had never seen a negro drawn on a jury. Now, that is evidence, but it showed little on whether or not because of color or race he had been systematically kept off the jury roll. Well, there are some other witnesses who did testify to never having seen negroes on a jury. These witnesses were not in as good a position to know, as Mr. Green, because it appeared that they did not frequent the courts much. There is also evidence that quite a number of colored male citizens were in the county at the time that roll was made up that are eligible to service on a jury. That comes by the testimony, pretty largely, of Frank Sykes, I believe it was, and that is supported to some extent by the state-

ments of other witnesses. If the evidence were to stop there, in my judgment it would make it a very debatable question, with the tendencies in my mind, that their rights had been denied by the manner in which the jury law had been executed. Now, in a general way, summing up all the movant's evidence in support of his petition, as I say, if the evidence stopped there, I would quash this venire because I believe that it is open to controversy and some answer, and I would be very much inclined to think that the law had not been properly executed. I do not understand there is a holding absolutely that the mere fact that the party—that the race had not been seen on a jury for a number of years would be absolutely sufficient. I think if it ran over a long period it might be, because I think one would be warranted in saying there must have been something that does not appear from the evidence. Now, the State has undertaken to answer that contention, and that evidence is offered. The first thing in the reply of the State is, that the officers in charge of the jury roll, its preparation, etc., are called upon to exercise in a sense judicial functions; it is made their duty to ascertain the qualifications of every male citizen in the county for jury duty between the ages of twenty-one and sixty-five. They are sworn officers of the law, and the law presumes that they did their duty. That is mere presumption, however. Of course, it can be met, and the evidence offered by the defense would tend to meet that presumption by showing the circumstances that I have just detailed. Now, that is a presumption that the law brings into the case, that they have done their duty, and, of course, there must be evidence that would reasonably satisfy the Court that they failed to discharge their duty. Now, in addition to that presumption the State has offered evidence by a member or members, by each member of the Jury Commission, in which one of them, at least, I have forgotten which, stated that the list of the colored people whose names had been produced by the movant and claimed to be eligible for jury duty had been examined; that they had examined these names and had made inquiry as to the men; they further

say without contradiction that on that jury roll that was obtained by the Clerk, presumably, at least, because the law requires him to obtain it; that at the time of the examination of the names on that roll that they did not know from that roll whether they were white or black. The proof, however, adduced shows, on cross-examination, that they did know a number of the names that were on there, and that they were all white, and that they were unable, at this time, to point out on the roll the name of anyone who was colored. They further testify with positive statements that no one was kept off that roll, or his name kept out of the jury box because of his race or color. Of course, we all know that the courts hold that the mere fact that a jury roll does not have the name of a colored person on it is wholly insufficient to declare that the law has been so administered as to violate the Constitution of the United States. The Supreme Court of the United States, which is the highest court in our land, has said, with reference to matters of this sort, that if the officers fairly and honestly endeavor to discharge their duty and do not, in fact, discriminate against the negro race in the selection of the jury list or roll, as we would call it in this case, then the Constitution has not been violated. In view of that declaration of the Supreme Court of the United States, I am prepared to say that I am reasonably satisfied from the evidence before me that the officers in obtaining the jury list or jury roll, and in selecting the names to go thereon, and selecting names therefrom to go in the jury box, have so administered the law as not to have violated the Constitution of the United States, and with that view of the evidence before me—and that is all I can go on—I shall overrule the motion.

Mr. Brodsky: The defendant excepts to the Court's ruling.

The defendant excepted to the Court's decision overruling the motion to quash the venire.

The voir dire examination of jurors thereupon was had on December 1 and 2, 1933, and the following occurred:

All the jurors were called and sworn by the Court to make true answers to all questions touching their competency as jurors to serve on the case.

Eighteen men were then called to jury box, and examined by the Court at great length, concerning their qualifications to serve on the case. The Court propounded the following additional questions to the jurors:

> Q. Now, the next question, you gentlemen all heard me the other day on that, the next question is one about a fixed opinion. I will make a statement about that before I require an answer to the question. The question is: Have you a fixed opinion of the guilt or innocence of the defendant Clarence Norris that would bias your verdict? A fixed opinion that the law recognizes is that you say, on your oaths, that it probably could not be changed by any evidence that might be produced on the trial of this case? Have you such an opinion as that?
>
> Q. Have you such an opinion or prejudice against this defendant or his race that would prevent you from trying his case according to the law and the evidence, and finding a verdict accordingly. Of course the question of sympathy or lack of sympathy does not enter into the consideration of the qualification of a juror, because he might have some feelings against certain crimes that would not disqualify him. Anything will disqualify a juror if he cannot try the case and reach a verdict according to the evidence, and evidence only, after applying the law given you in charge by the Court.

In reply to the question by the Court, "Are you opposed to capital or penitentiary punishment?" one juror stated that he was opposed to capital punishment. He was challenged by the State. The Court allowed the challenge and defendant excepted.

Defense counsel interrogated Phil Humphrey, a juror, as follows:

Q. Mr. Humphrey, wasn't you the gentleman that said that you had an opinion which would require some evidence to remove? A. I don't think I did, no, sir.

Q. You are the gentleman engaged in the automobile business? A. Yes, sir.

Q. And I asked you if you had any opinion in the case, and you said that you did, and that it would require some evidence to remove it? A. I don't remember that.

Q. Have you any opinion at all in this matter? A. No, sir, I haven't formed any opinion.

Q. No opinion whatsoever? A. No, sir.

Q. Has anything transpired in the last few days as a result of the Patterson case on trial, which you know about or are aware of, that has caused to appear in your mind as to the guilt or innocence of this defendant? A. None.

Q. Do you feel now, in spite of the trial that has been in progress, and in spite of anything that transpired in the past, you could give this defendant a fair and impartial verdict, based on the evidence? A. Yes, sir.

Q. Do you know Mr. Wade Wright? A. Yes, sir, I know him when I see him.

Q. Do you know him any more intimately than that? A. No, sir.

Q. You have no business or social contact with him? A. No, sir, just a passing acquaintance is all.

Q. That wouldn't make any difference in any verdict you might render? A. No, sir.

The Defense has no challenge for cause as to any of the gentlemen except Mr. Phil Humphrey.

Court: Overruled. Exception.

Mr. Leibowitz: We wish an exception to all jurors challenged by the State on account of being opposed to capital punishment.

Thereafter, eighteen additional jurors were called into the jury box and examined by the Court, at great length concerning their qualifications to serve as jurors in this case. During such examination, the Court propounded the following question:

> Q. (By the Court) Now, the law does not permit a man to sit on a jury when he has a fixed opinion of the guilt or innocence of the defendant that would bias your verdict. The law defines what that is. It says that a fixed opinion is one that cannot be changed after hearing all the evidence in the case, regardless of what it was. Have you any fixed opinion of the guilt or innocence of this man that would bias your verdict?
>
> A. No.
>
> Mr. Leibowitz: May I note on the record that we except to the Court's definition of a fixed opinion as contemplated by law. Counsel for defense contends that it is only an opinion which would require some evidence to be produced to change it.
>
> Court: I'll ask that for you. No, I believe I'll let you ask it.

B. P. Collier, a juror, during examination by defense counsel, testified as follows:

> Q. (By counsel for defendant) The fact that this defendant has been indicted, would that create any opinion in your mind that he was guilty? A. (By Mr. Collier) Nothing more than an indication of his guilt.
>
> Q. You appreciate the fact that an indictment is found without any witnesses on the part of the defendant? A. Yes, sir.
>
> Q. The indictment being returned, would that raise in your mind an opinion that it indicated that the defendant is guilty? A. Yes, sir.
>
> Q. It would require some evidence to remove that opinion, wouldn't it? A. I have no opinion whatever, because I am not in a position to know.

Q. Assuming that this man was indicted, would it require some evidence to remove that indication? A. I don't consider there is anything in my mind to remove.

Q. In your opinion, is an indictment some evidence of guilt? A. Yes, sir, as far as it goes on that side, it is an indication of guilt.

Defendant challenges for cause.
Overruled. Exception.

Thereafter, eighteen additional jurors were called into the jury box and examined by the Court at great length, concerning their qualifications. During such examination, the following occurred:

Q. (By the Court) Are you opposed to capital or penitentiary punishment?

Seven jurors stated they were opposed to capital punishment, and were challenged for cause by the State. The defendant excepted to the challenge for cause, because the proper foundation had not been laid for such challenge.

Q. There is another question I want to talk to you about before you answer it, and that is this: Have you a fixed opinion as to the guilt or innocence of the defendant that would bias your verdict? Now, a fixed opinion is an opinion that is so fixed, either as to the guilt or innocence of the defendant, that the evidence which you hear in this case would not and could not change that opinion. The law requires that you try a case according to the law and the evidence, and if your opinion is of that character, it would prevent your doing that——

Mr. Leibowitz: We reserve an exception to the Court's definition.

Q. Now, gentlemen, is the opinion that you have, if any, such an opinion that would prevent your sitting on the jury and that opinion could not probably

be changed by the evidence, however innocent, the evidence might show him to be, or however guilty, it might show him to be, would that prevent you from bringing in a verdict according to the law and the weight of the evidence?

Six jurors stated that they had such an opinion (and were excused by the Court).

Another juror, Mr. Phelps, was challenged by defendant for cause for having a fixed opinion. The Court sustained the challenge.

Counsel for defendant challenged a juror, Mr. Kitchens, for cause, for having read newspaper accounts of the case after notice had been served on him to appear as a juror. The Court overruled the challenge and defendant excepted.

Thereafter, eighteen additional jurors were called into the jury box and examined by the Court at great length, concerning their qualifications. During such examination, the following occurred:

Q. (By the Court) Are you opposed to capital punishment?

Three jurors who stated they were opposed to capital punishment were challenged for cause by the State, and the defendant excepted to the allowance of the challenge.

Q. There is another question I want to ask you, but before you answer it I want to make some explanation as to the meaning of the question. The next question is: Have you a fixed opinion as to the guilt or innocence of the defendant that would bias your verdict? Now, a fixed opinion is such that you would not render a verdict according to the evidence that you are sworn to follow. If you have such an opinion that it wouldn't make any difference what the evidence showed in the case, if you couldn't lay that opinion aside and try the case according to the law and the evidence. Have any of you such a fixed opinion as I have defined?

After examination by defense counsel, a juror, Mr. Thornton, was challenged by defendant for having a fixed opinion. The Court excused the juror.

Mr. Stinson, next juror examined by counsel for defendant, testified:

> Q. Did you attend any of the sessions of the Court when this case was being tried? A. I heard a little of it the other evening.
>
> Q. Day before yesterday? A. Yes, sir.
>
> Q. You were here in court? A. Yes, sir, just a few minutes. I never heard no evidence, to amount to anything.
>
> Q. Did you hear any of the evidence? A. A little.
>
> Q. Do you know who testified? A. That lady.
>
> Defendant challenged for cause.
>
> Overruled. Exception by defendant.

This juror had been examined by the Court at great length, touching his qualifications and he had in answer thereto shown himself to be qualified.

The next juror, Mr. Simmons, was challenged by defendant for cause, for having a fixed opinion. The Court sustained the challenge.

The panel of one hundred jurors having been exhausted without a sufficient number of qualified jurors having been obtained, the Court drew twelve additional names from the jury box. When the twelve additional jurors appeared, the Court administered the oath and examined at great length the jurors on their qualifications. During the Court's examination, the following occurred:

> Q. (By the Court) Do you believe a conviction should be had on circumstantial evidence?

Two jurors were excused because they did not believe a conviction should be had on circumstantial evidence. Defendant excepted to the allowance of the challenge on this ground, for the reason that no proper foundation had been laid for the challenge.

Q. There is another question I am going to ask you, but I want you to listen to my explanation of it befort you answer. The next question is: Have you a fixed opinion of the guilt or innocence of the defendant that would bias your verdict. You will notice that it says "Fixed opinion that would bias your verdict." Have you such a fixed opinion as that you feel that after having heard the evidence, whatever it might show as to the defendant's guilt or innocence, you could not try it according to the evidence?

Eight jurors were then excused by the Court because of fixed opinions.

Mr. Lawhorn, a juror, after examination by counsel for defendant, was challenged for having a fixed opinion, for cause. The Court allowed the challenge.

The panel of one hundred jurors and the additional twelve jurors called by the Court having been exhausted without a sufficient number of qualified jurors having been obtained, the Court drew ten additional names from the jury box. When the ten additional jurors appeared, the Court administered the oath and examined them at great length, concerning their qualifications. During the Court's examination, the following occurred:

Q. (By the Court) Are you opposed to capital punishment?

Two jurors stated that they were opposed to capital punishment and were challenged for cause by the State. Defendant excepted to the allowance of this challenge.

The Court then defined a fixed opinion and three jurors stated they had fixed opinions. They were excused by the Court.

Mr. Watson, a juror, was then questoined by defense counsel, and testified as follows:

Q. Did you read the evidence published in the papers? A. Yes, sir.

Q. Did you follow the case through? A. I just read parts of it.

Q. From reading the evidence in the paper, did you form some opinion, either way, whether this defendant was guilty or not? A. I would say that I probably did.

Q. As you sit there, do you have that opinion in mind—is your mind full of that opinion? A. No, I wouldn't say that it is.

Q. Have you abandoned that opinion, cast it aside? A. I don't know as I ever had an opinion.

Q. That is what I am trying to find out—did you ever talk with anybody as to what your idea was, as to whether the defendant was guilty or innocent? A. I have heard it discussed, yes, sir.

Q. You have heard opinions expressed by others as to his guilt or innocence? A. Yes, sir.

Q. Did you express your opinion as to how you felt about the case? A. No, sir, I didn't say nothing.

Q. Did you ever say that you thought this man was guilty or that he was innocent, or these men, talking about them collectively, the Scottsboro defendants? A. Well, I think I probably did.

Q. Was that about the guilt or innocence of this man? A. Yes, sir.

Q. What you thought ought to be done with them? A. Yes, sir.

Q. And what the punishment should be? A. Yes, sir.

Q. Did you express that opinion in terms definite? A. Yes, sir.

Q. Did you tell your friends that your mind wasn't made up, or that you didn't know anything about it? A. No, sir.

Q. Would it require some evidence on the part of the defendant to remove that opinion you had? A. How is that?

Q. Before you render a verdict of not guilty, would you expect this defendant to come into court and offer

some evidence, put some witnesses on the stand to satisfy your mind that he was not guilty, and if he didn't do that, would you follow out and stick to your opinion that you had originally as to his guilt? A. Yes, sir.

Defendant challenges Mr. Watson for cause.

Court: Let me ask him some questions. In this trial, if you were on the jury, and after the State had offered all the evidence it desired to offer, and it stopped there, and after you had weighed that evidence, and in your sound judgment if the evidence was not sufficient to warrant a conviction, would you convict him or acquit him?

A. If I didn't believe from the evidence that he was guilty, I would acquit him.

Court: I overrule motion to challenge for cause.

Defendant reserved exception.

Q. (By defense counsel) Let me ask you this, Mr. Watson, if you were selected as a juryman in this case, would you start off with your opinion that the man was guilty? A. No, sir.

Q. What would you start off with?

Court: I think that is going too far.

Q. Would you start off with any idea that he was innocent or guilty? A. I don't know what my mind would be.

Q. You can't tell this Court whether you would start off with an open mind, or whether you would have to wait and hear the testimony? A. I could start off with an open mind.

Q. You think you could lay aside your opinion entirely, absolutely and without question? A. Yes, sir.

Q. (Further on—By the State) As a matter of fact, as you sit there, you have no opinion as to the guilt or innocence of the defendant, Clarence Norris? A. No, sir.

Q. (By the State) You would sit in this case as in any other case until he is proven guilty beyond a reasonable doubt before you would convict him? A. Yes, sir.

The Court drew six additional names from the jury box. When the six additional jurors appeared, the Court administered the oath and examined them at great length concerning their qualifications. During the Court's examination, the following occurred:

Q. (By the Court) Are you opposed to capital or penitentiary punishment?

One juror was challenged for cause by the State on this ground and the defendant excepted.

Q. (By the Court) Now, another question I am going to ask you is one I don't want you to answer until I have explained it, and the question is this: "Have you a fixed opinion as to the guilt or innocence of the defendant that would bias your verdict?" A fixed opinion means an opinion that you have acquired in any way, from any source, and is of such a character and kind that it would prevent you from finding a verdict in this case, either guilty or innocent, according to the evidence that is to be offered from the witness box. Gentlemen, are any of you in that fix, have you such a fixed opinion as to the guilt or innocence of this defendant?

Thereafter, an additional juror, Mr. Todd, appeared in court. After being sworn and examined by the Court and counsel for the defendant at great length, the following occurred:

Counsel for the defendant renewed the motion previously made for a change of venue, as follows:

Mr. Leibowitz: Defendant here renews his motion for a change of venue on the ground that it affirmatively appears from the vast number of persons that

have appeared before the Court with opinions that have been so fixed as to the guilt or innocence of this defendant, that as matter of law, the Court should take judicial notice of the fact that the defendant cannot obtain a fair trial.

Mr. Knight: I think that the fact that the jurors have been honest enough to state that they have a fixed opinion is an absolute guarantee that he can get a fair trial when the jury is selected.

Court: Your motion is overruled.

Mr. Liebowitz: We reserve an exception.

Mr. Sivley, a juror, later appeared, and after being sworn and examined by the Court at great length touching his qualifications, was questioned by counsel for defendant and testified as follows:

Q. (By counesl for defendant) You are a merchant here in town? A. (By Mr. Sivley) Yes, sir.

Q. Do you know Mr. Wade Wright? A. Yes, sir.

Q. Do you know him well? A. Yes, sir.

Q. Do you do any business with Mr. Wright? A. Yes, sir.

Q. What kind of business are you in? A? Hardware.

Q. He is a customer of yours? A. Yes, sir.

Q. Members of his family buy at your place, too? A. Yes, sir.

Q. Have been doing so for a good many years? A. Yes, sir.

Q. Have you made an affidavit in connection with this case? A. No, sir.

Q. Have you been approached to make an affidavit? A. No, sir.

Q. Have any of your men been approached to make an affidavit? A. Not that I know of.

Q. About the sale of hardware and firearms in connection with this case? A. Made an affidavit? No, sir, I haven't made one.

Q. Has any man in your store, employed by you, made such an affidavit? A. What do you mean?

Q. What I want to know is this, whether or not in connection with the proceedings in this case, any man in your store has made an affidavit, if you know? A. What kind?

Q. About this case. A. Made an affidavit?

Q. Yes, about this case? A. Not that I know anything about.

Q. Have you read about this case in the papers? A. Yes, sir.

Q. Have any of your customers spoke to you about this case? A. Yes, sir.

Q. When they expressed their opinion about this Scottsboro case, did they say whether or not they thought they were guilty, these defendants were guilty? A. Yes, I have heard that.

Q. Did they give you their reasons why they thought they were guilty? A. Give their reasons?

Q. Yes, in discussing it with you? A. Nothing only from the evidence.

Q. From what evidence? A. That the people had heard.

Q. That people had read about in the paper? A. Yes, sir.

Q. In discussing the case with you did any man state that he had been at the court house some time previous to yesterday and tell what he thought about the case? A. No, sir.

Q. Were these friends and customers of yours that gave you their opinions? A. Friends of mine?

Q. Yes. A. Yes, sir.

Q. Did you share their opinions with them? A. I haven't heard the evidence, any of it, and I couldn't share their opinions unless I had heard the evidence.

Q. People sometimes have opinions without hearing the evidence? A. Yes, sir, they might do that. Hearing the evidence, though, might change their opinions.

Q. Do you have any opinion whether this man is guilty or not, without hearing the evidence? A. I couldn't say that I had an opinion without hearing the evidence.

Q. Do you say now that you have no opinion at the present time? A. Have no opinion as to the guilt of this man?

Q. Yes. A. Only what I read in the paper.

Q. From that, from what you read in the paper, have you formed any opinion in the matter? A. To a certain extent, yes, sir.

Q. As to the guilt or innocence of the defendant? A. Yes, sir.

Q. Would you ask the defendant to come into court and produce evidence in his behalf to prove to you that he isn't guilty before you would be willing to surrender that opinion? A. How was that?

Q. Would you ask this negro on trial to come into court and produce evidence to satisfy you that he wasn't guilty before you would be willing to lay aside your opinion that you have of it? A. Yes, sir.

Q. What I am trying to get at is this, a man goes into the jury box with an opinion, let's say, for instance, he believes a man is guilty, and then the prosecution puts in its evidence, produces its witnesses, and suppose the defendant just sits quietly and doesn't put in any proof at all, what I want to know is, whether you would go into that jury room and say, I had an opinion that he is guilty, and the State has put in its proof and because the defendant has not come forward with any proof of his innocence, I will stick to my opinion that he is guilty, is that clear? Would you do that? A. The way I understand it is, if the defendant did not make any fight at all, and the State proved his guilt, would I go into the jury room with a fixed opinion that he was guilty, is that what you are trying to ask me? If that was true, I think I would say that he was guilty.

Q. Would the opinion that you carry with you have some weight, in addition to the evidence that the State produces, if the defendant did not put in any proof? A. I don't quite get your question.

Q. (By the Court) Let me ask a question. Suppose in this case on trial, you say you have some sort of an opinion from what you have heard, or from some other reason, and you go into the jury box, and the case proceeds to trial, and the State offers its evidence, and the defendant doesn't offer any at all, if the evidence offered by the State did not satisfy you beyond a reasonable doubt of the defendant's guilt, would you convict him any how? A. No, sir, I wouldn't do it.

Q. I want to ask you, Mr. Sivley, if you can lay aside your opinion, whatever it is, as to the guilt or innocence of this defendant, just lay it aside, take off your hat and go into the jury box with a free and open mind? A. That would be pretty hard for me to do.

Q. Pretty hard to consider the case with an open mind. Challenged for cause.

Court: Overruled. Exception by defendant.

Q. (By Mr. Chamlee) Didn't you and your partner both make an affidavit about the sale of firearms for the State in this case? A. I believe we did.

Q. (By Mr. Lawson) To refresh your recollection on about that, Mr. Siveley, don't you recollect that I came in your store with Mr. Fred Robinson, and asked you to make an affidavit about the sale of firearms, telling you that it had been stated that all firearms had been sold out in Decatur when this case was on trial before? A. Yes, sir, I made that affidavit.

Q. (By Mr. Knight) If you are selected as a juror when you go in the jury box, and the Court instructs you to the effect that you must believe the defendant guilty beyond a reasonable doubt before you can convict him, and that must be proven by the evidence that is produced before you, if you were not, as a juror, con-

vinced of his guilt beyond a reasonable doubt, would you convict him? A. No, sir, I wouldn't convict him unless he was proved guilty beyond a reasonable doubt.

Mr. Leibowitz: We renew our challenge for cause, on the ground that he made an affidavit for the State.

Court: Overruled. Exception by defendant.

Q. (By defense counsel) Do you have any resentment because of the questions I have asked you? A. No, sir, I am not mad.

Mr. Shumake, a juror, came in and was sworn and examined by the Court. During such examination the Court asked the juror: "Are you opposed to capital punishment?" The juror answering in the affirmative, the State challenged for cause, the Court sustained the challenge and defendant excepted.

That was all on the voir dire examination.

Every juror that was called and placed on the venire was examined exhaustively by Court and counsel, touching his qualifications. The transcript of the examination covers eighty-three pages of the transcript of the proceedings. Every juror was asked if he had any prejudice against the defendant or his race. The defendant's counsel examined the jurors at length, the evidence on the voir dire covers eighty-three typewritten pages of the transcript of the questions and answers.

At the opening of the trial, at 8.30 o'clock A. M., December 2, 1933, counsel for the State announced that the State was not ready for the reason that Luther Morris, a witness for the State, was not present in court, and asked the Court for an adjournment of the trial until Monday, December 4th. Counsel for the defendant objected and stated that the defense was ready to proceed to trial. Counsel for defendant offered to stipulate with counsel for the

State, that in order not to delay the trial, the defense would not oppose the reading in evidence of the testimony of Luther Morris given by him at the trial of the defendant Haywood Patterson, if the State should immediately proceed to trial, and should Luther Morris not appear to testify during the trial. Counsel for the State refused to so stipulate. The Court then directed that the trial proceed, as Luther Morris might appear later in the day, but if he did not, the Court would again consider the matter.

In the early afternoon counsel for the State announced that the State was ready to rest except for the testimony of Luther Morris, and again moved for an adjournment until Monday, December 4th. The Court granted this motion. Counsel for the defendant excepted, stating that two motions for continuances made by the defense at the trial of Haywood Patterson had been denied by the Court under similar circumstances, to wit: requests for a continuance until the arrival of Dr. E. E. Reisman and of the deposition of Ruby Bates, both witnesses for the defense.

The jury having been sworn, the following was the testimony and all the testimony given at the trial:

VICTORIA PRICE, being sworn as a witness for the State, testified as follows:

Direct Examination:

My name is Mrs. Victoria Price. I live at Huntsville, Alabama, and lived there on the 25th day of March, 1931. On the 25th of March, 1931, I was riding on a freight train that was traveling through Jackson County, Alabama, along the Southern Railway, from Stevenson, Alabama, to Paint Rock, Alabama. I was on that train when it reached Stevenson. Ruby Bates was riding with me on that train. After the train left Stevenson, Alabama, coming this way in the direction of Paint Rock, I was riding in a gondola car. Ruby Bates and several white

boys were in the car with me. The car had chert in it, what I heard called chert. It lacked about a foot and a half or 2 feet of being full. I saw this defendant on that occasion, Clarence Norris. When I first saw him on that train, running between Stevenson and Paint Rock, they was coming over the box car; the defendant and some more colored men. There was twelve colored men at that time, to the best of my count and recollection.

The following then occurred:

Q. Did all of these twelve come over into that gondola car?

Mr. Leibowitz: We object to that.

Court: I'll overrule the objection.

Mr. Leibowitz: We except.

A. Yes, sir.

The following then occurred:

Q. Did you see him strike any of the white boys?

Mr. Leibowitz: We object to that. He is putting the answer in her mouth. I want to ask that the witness be instructed by the Court to answer "Yes or no."

Court: I am not going to give any such instructions as that. I will wait and see what she says. (To witness) You don't have to answer "Yes, sir," or "No, sir." Just answer the questions asked you.

All these twelve men jumped into the gondola over mine and Ruby Bates head.

The following then occurred:

Q. Did you hear any of them say anything as they came into the gondola car?

Mr. Leibowitz: I am objecting to all this, your Honor, unless this defendant is the one that said it.

Court: I'll overrule the objection.
Mr. Leibowitz: Exception.

A. Yes, sir, as they came over, I did. Some one of them, I don't know which one it was, he said, "All you white sons of bitches unload."

Q. Did either of these men have any pistols, or guns that you saw?

Mr. Leibowitz: We object to that.
Court: Overruled.
Mr. Leibowitz: Exception.

Two of them had pistols to the best of my recollection. I wouldn't be positive that this defendant had a pistol. Some of them had knives in their hands as they got into the gondola car. I wouldn't say, but to the best of my knowledge some of them had them open. After one of them said "All you white sons of bitches unload," the following then happened on that car, between this man or anybody else: they knocked them off and begun to run up and down the side to see that they did not get back on, i. e., the white boys they had knocked off, except Gilley. Then they commenced to attack us girls, me and Ruby Bates. They put their hands on me. After they got the white boys off, I went to the corner of the gondola to get over, and one of the crowd in the back of the car, "We are not going to hurt you," and when I started to make my jump he hit me, he hit me, and one of them pulled off my clothes, my overalls——

The following then occurred:

Mr. Leibowitz: I object to "one of them" or "somebody"; this defendant is on trial and what he did is the issue.
Court: I'll overrule the objection.
Mr. Leibowitz: Exception.

The testimony continued as follows:

They taken my overalls off and then they taken me and threw me over on the chert, and one of them held my legs, and one held a knife on me there, and then one of them raped me and Ruby Bates.

The following then occurred:

Mr. Leibowitz: We move to strike out "Ruby Bates."

Court: Overruled.

Mr. Leibowitz: Exception.

Q. Did this defendant have sexual intercourse with you? A. Yes, sir.

Mr. Leibowitz: We object to that as leading.

Court: Overruled.

Mr. Leibowitz: Exception.

His private part penetrated my private part.

The following then occurred:

Q. While he was having sexual intercourse with you, was anyone holding you in any way?

Mr. Leibowitz: We object to that as leading. He is putting the answer in her mouth.

Court: I'll overrule the objection.

Mr. Leibowitz: Exception.

One of them held a knife at my throat and one of them held my legs. I had on a pair of step-ins, three dresses, a pair of overalls, shirt, girl's coat and a girl's hat. I got off of that train at Paint Rock.

The following then occurred:

Q. Were these colored men in the car, the gondola car, where you were, when the train came to a stop?

Mr. Leibowitz: We object to that as leading. He is putting the answer in her mouth.

Court: Overruled.

Mr. Leibowitz: Exception.

A. They were running out of the gondola car towards the engine when the train stopped.

Q. All of them?

Mr. Leibowitz: We object to that.

Court: Overruled.

Mr. Leibowitz: Exception.

A. Yes, sir. When the train stopped I straightened up and I got up in the gondola and was looking to see what was going on, and I started over the side of the gondola to get off, and when I got to the last step I fell, and I didn't know anything else until I come to myself in Paint Rock, in a store. That store was some distance from the depot and the track.

The following then occurred:

Q. How many of them had sexual intercourse with you on that car on that occasion?

Mr. Leibowitz: We object to that.

A. Six, to the best of my recollection. Well the train stopped at Paint Rock in five or ten minutes after they had stopped having sexual intercourse. I had done put my clothes on me and got to one side. This fellow Gilley and Ruby Bates helped me. Orville Gilley is a white man. When Ruby Bates and I got into that gondola car at Stevenson no one else was in there. No one else got in there from the time the seven white boys got in, until these colored men came into the car. We was in the end of that car towards the caboose of the train when the seven white boys got into it; in the gondola, on the chert.

When the white boys got in the car they climbed in and lay down on their stomachs, feet towards us, and their heads towards the engine, they were in the other end. That is about the position we were in in that car when these colored boys came into it.

Cross Examination by Mr. Leibowitz:

My true name is Mrs. Price. I am not Mrs. Price; my husband's name is not Price. My last husband's name is McClendon. His first name is Emma. I was married to Mr. McClendon in Huntsville, Alabama. I don't know how long it was before this rape that I was married to Mr. McClendon; I had been married to him over a year or two. I did not assume the name of McClendon. I never went by my husband's name. I had another husband, too. His name was Henry Presley. I married him in Fayetteville, Tennessee. I don't know exactly how long before I married my second husband I married my first husband. It was a couple of years. I wouldn't be positive. I was married by a justice. I cannot give you the date of that marriage. I did not have any other husband besides those two. I did not ever use the name of Presley, my first husband's name.

The following then occurred:

Q. Who did you start out to Chattanooga with the day before—I withdraw that—you ever been convicted of a crime?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Leibowitz: I haven't finished my question.
Court: It sounded like it to me.

Q. Wasn't you convicted of a crime involving moral turpitude—Look this way please, not over that way!)

Court: Now, Mr. Leibowitz, don't proceed along that line any more.

Q. Were you ever convicted of a crime involving moral turpitude, under the name of Victoria Presley, in the year 1927?

Mr. Knight: I object to that.

Court: I doubt whether this witness knows what moral turpitude is; I doubt whether half the lawyers know it or not.

Mr. Leibowitz: That is on the question of credibility.

Court: Ask if she has been convicted and I can then determine whether that involves moral turpitude.

Q. What were you convicted of?

Mr. Knight: We object to that.

Court: I sustain the objection.

Mr. Leibowitz: Your Honor just told me to ask it.

Court: No, not that way—you misunderstood me.

Mr. Leibowitz: May I have an answer to my previous question?

Court: I sustained the objection to both of them.

Mr. Leibowitz: Exception.

Court: You can ask her if she has ever been convicted of a certain offense, and I can then determine whether you can ask that kind of question.

Q. Were you ever convicted of the crime of adultery?

Mr. Knight: We object to that.

Court: I sustain the objection. (To the jury) Gentlemen of the jury, when a question is asked and I sustain an objection to that question, that question and all that involves and all inferences from it, is out of the case, and not evidence in the case, and you must not consider it in arriving at your verdict.

Mr. Leibowitz: Exception.

Q. Were you ever convicted of the crime of fornication?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Leibowitz: Exception.

Q. Were you ever convicted for a violation of the prohibition law?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Leibowitz: Exception.

Q. Were you ever convicted of vagrancy and drunkenness?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Leibowitz: Exception.

Q. Were you ever convicted of any crime under the name of Victoria Presley?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Leibowitz: Exception.

The testimony then continued:

I wasn't working on March 24, 1931, neither was Ruby Bates. I did not leave my home town which is Huntsville, on March 24, 1931, with a man named Lesfer Carter.

[Lester Carter is brought in.]

I know Lester Carter when I see him. That is he. I did not see Lester Carter at the time I left Huntsville on the freight train to go to Chattanooga. He was not, at any time, with me and Ruby Bates, on the same freight car going to Chattanooga; if he was I didn't know him. If I had ever spoken to Lester Carter before March 24, 1931,

I don't remember it. I never saw him before in my life, not as I know of. I left Huntsville some time of the afternoon before the day I claim this trouble happened. I rode on to Chattanooga.

The following then occurred:

Q. You were going to Chattanooga for what purpose?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Leibowitz: Exception.

I did get to Chattanooga. It was getting along towards dark when the train arrived in Chattanooga. When I got off the train Lester Carter was not with me.

The following then occurred:

Q. Did you meet a man named Gilley at the train?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Leibowitz: Exception.

I know Gilley.

The following then occurred:

Q. Where was the first place you claim that you met Gilley, on the train when you were coming back—had you ever seen Gilley before that time? A. Not as I remember.

Q. Not that you know of? A. No, sir.

Q. You hadn't spoken to Gilley in Chattanooga, had you? A. I probably had and didn't know who he was.

Q. Mrs. Price, did you speak to any person in Chattanooga, just "yes" or "no" please?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Leibowitz: Exception.

Q. Did Gilley bring you some food in Chattanooga? A. Yes, sir.

Mr. Knight: We object to that.

Court: I sustain the objection. Gentlemen, she made answer to the question. That is excluded because I have held that the question is illegal.

Mr. Leibowitz: Exception.

Q. I will ask you, Mrs. Price, where you spent the night in——

Mr. Knight: I object to that.

Mr. Leibowitz: I am not going to continue this examination if I am to be interrupted.

Court: You are going on with the examination, and I am not going to allow you to be interrupted. Wait until you are certain that he is through with his question, Mr. Attorney General, before you make any objection.

Q. I am going to ask you, Mrs. Price, if you spent the night in Chattanooga in a wooded section near the railroad yards?

Court: I see that you have gone far enough with it, myself, to make that question illegal, and I sustain the objection to it.

Mr. Leibowitz: We except.

Q. I must ask just one more question, don't answer it until objection is made and ruled on by the Court. Did you, there that night, in and about the railroad yards in Chattanooga, have sexual intercourse with one Lester Carter, or one Gilley, in company with Ruby Bates?

Mr. Knight: We object to that.

Court: I sustain the objection. Mr. Leibowitz, that question was so palpably illegal that you ought not to have asked a question like that.

Mr. Leibowitz: I except to the admonition of the Court and move for a mistrial.

Court: The motion is overruled.

Mr. Leibowitz: Your Honor sustained the objection to the question?

Court: Yes, sir.

Mr. Leibowitz: Exception.

The testimony then continued:

To the best of my recollection, the gondola in which I was riding was right next a box car. To the best of my knowledge, I have told the story that I am telling here now a number of times, as to what happened. I have told it at least eight times in the court from the witness stand. I told it before the grand jury and four times in Scottsboro. I told it before Judge Horton last spring; I told it here the other day, and I am telling it here again to-day.

The following then occurred:

Q. Did the man by the name of Gilley give you a little box of snuff in Chattanooga?

Mr. Knight: We object to that.

Court: The objection is sustained.

Mr. Leibowitz: Exception.

I was sitting in this gondola, next the box car, which was behind me. I had my back towards the box car. I was sitting with my back up against the end of the gondola and saw these colored boys jump over my head into that gondola. That was after I left Stevenson. When we boarded that train I never paid any attention whether Lester was on there close to us or not. Me and Ruby Bates did get on the train together. We were not together with Lester Carter and Orville Gilley. We had not been with Lester Carter and Gilley just before we got on the train, all four in a party together. If I was with them, I didn't know who it was. There was several standing there. Me, Gilley, Lester Carter and Ruby Bates did not all four stay together on that train to Stevenson. When the train

came to Stevenson, me and Ruby Bates, Lester Carter and Orville Gilley did not leave the train together, or in one crowd. I spoke to some; that was scattered all around on the oil tank on that train from Chattanooga to Stevenson. I spoke to some boys on the oil tank. I did not have conversation with them. I said good morning to them. At that time I didn't know Lester Carter. I had seen him a time or two, but I didn't know his name.

The following then occurred:

Q. May I ask this question: Isn't it a fact that you and Lester Carter were together in the very same jail in Huntsville?

Mr. Knight: We object to that.

Mr. Leibowitz: On the question of credibility, your Honor.

Court: I sustain the objection.

Mr. Leibowitz: Exception.

I know a man named Jack Tiller. He is my guard, he has been my friend. He is a married man; he used to be.

It isn't a fact that after we got into the gondola car and had left Stevenson, me with Gilley, Lester Carter and Ruby Bates, that we four alone got into that gondola. It isn't a fact that while in such gondola car Orville Gilley was lying on the chert singing hobo songs while Lester Carter was blowing on the mouth organ. I did not see or hear Lester Carter blowing a mouth organ at any time on that train. I did not hear Orville Gilley recite any poetry or sing any hobo songs while riding on that train that day. I wouldn't be positive whether I had a snuff box with me. I had snuff in my mouth. I got that snuff out of a snuff box. I did not put that snuff in my mouth while riding on the train. I had put the snuff in my mouth in Chattanooga and that came out of a snuff box. I wouldn't be positive whether I had any snuff box when I got to the jail that day at Scottsboro. I didn't have any snuff box in jail. It was lost. I didn't lose that snuff box on the gondola on which I was riding. That gondola where the snuff

box was found, the fourth or fifth gondola, one of the middle cars here, was not where I was riding. I remained in this gondola all the morning and stayed there until I got off the train after leaving Stevenson. When these colored boys jumped into the gondola they fought in the same gondola. Ruby Bates and I stood up after the colored boys got on the gondola. We were standing up, watching the fight. After all of the twelve got in there, twelve of them started to fight with the white boys. These twelve negroes were fighting with the white boys. Every one of the twelve negroes were taking part in the fight with the white boys. Right next to us was a box car. It was something like five or ten minutes after the fighting started before the white boys were thrown from the train. I was right close to the end of this car. I had on overalls at that time and a woman's cloak. The cloak had a fur collar.

That was when I was in a position to step from the gondola car and get on this box car. I was right next the box car; just the partition of the gondola. I stayed there until the fight was over. I stood there with Ruby Bates. It was then that I claim that I was assaulted, after five or ten minutes standing there (indicating), next this end of the car. I was interested in watching the fight. I looked at it to see how it was going on. I didn't do anything at that time. I stood there looking at the fight. There was nothing to stop me from getting out from the gondola onto the box car. The colored boys were engaged in the fight with the white boys for five or ten minutes. I saw the white boys being put off the train. My best recollection is that they got off on one side, on the left side looking towards the engine. Well, I wouldn't say positive how many got off on that side. I counted the twelve negroes, but not as they came into the car. I did not say, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12. I did not count them while they were fighting. There was nine in there and three got off. I saw the three get off. That was while I was being raped. They stepped over my head and got on the side of the box car. I did not see them jump to the ground. I know they got out of the gondola, then

I counted nine others there. I wasn't unconscious. My mind was clear. I counted them when we got down to Paint Rock. I counted them while I was lying down, not while the raping was going on—afterwards. I counted them while lying kin'ly on my side. They wasn't all over the car; kin'ly around there pretty close to me; none behind me. Some were in front of me, some on the side of me. I wouldn't be positive how long it was before I got to Paint Rock that I counted them. The raping stopped five or ten or fifteen minutes before we got to Paint Rock. Five minutes or a little over before the train stopped. I did not count them for any particular reason that I had in mind; not so that I would know how many raped me.

After they quit raping me and Ruby, I was kin'ly lying on the side. My face was not on the chert. I was not holding my face up. Some of them were large negroes that had intercourse with me; kin'ly heavy; kin'ly rough. Before I got down on the chert, I was hit in the head with a gun. They hit me between my eye and top of my head; hit me along there (indicating). I wouldn't be positive where they hit me. It bled a little bit. It didn't make my head swollen there. Well, it did, a little bit.

I don't know the make of any gun. I don't know what calibre means. I don't know a .38 from a .45. I didn't ever know anything about the calibre of any guns at any time in my life. All I know is that he had the barrel in his hand and hit me with the other end. The barrel is the end the smoke comes from.

The following then occurred:

Q. Where did you find that out?

Court: I don't see any use in taking up time with that. I would imagine that anyone with common sense would know which was the barrel of a pistol.

Mr. Leibowitz: I want to except to the Court's statement in reference to the cross-examination.

He hit me with the butt. I don't know which is the butt; I reckon the handle is the butt. The handle is the butt end I know that. I don't know which way the pistol was when he hit me. I probably might have told you the other day that it was the butt end of the gun; I don't know anything about it. Whichever part he hit me with, he hit me on the head between the eyebrow and the top of the head, right along here (indicating) somewhere. When he hit me, some blood came out, a little bit. I was standing up when he hit me. He didn't hit me; he didn't knock me down. He hit me. They was all scuffling around me there. After the man hit me with the butt end of the pistol, which caused a wound on my head that bled a little. I don't know whether he punched me or not; I don't remember.

The following then occurred:

Q. Way back in Scottsboro you knew something about the calibres of guns, didn't you, "Yes" or "No," didn't you? A. I just has been told what they called guns.

Q. You knew all about the calibres of guns in Scottsboro, didn't you? A. No, sir.

Q. Let's see; the very first trial you testified in, in Scottsboro, hardly a week or ten days after this supposed rape, do you remember testifying before Judge Hawkins? A. Yes, sir, before Judge Hawkins, I did.

Q. Do you remember being asked these questions and making these answers: "Q. That one yonder, Charley Weems? A. Yes, sir. Q. With a gun or pistol? A. A pistol, a .45."

Court: Do you remember whether you said that or not?

A. I probably did, Judge, your Honor.

Q. Now, in the Patterson case, I will ask you if you were not asked this question, and make these answers: "Q. What did you see this defendant do in that fight? A. I seen him knock a boy in the head. A. What with? A.

A gun. Q. A pistol? A. A .38." Did you say that? A. I don't know whether I did or not; I don't remember.

[It is stipulated that defense counsel is reading correctly the record made by the official stenographer and that he reported the testimony correctly.]

Q. Were you not asked these questions and make these answers in the Powell, Roberson, Wright, Montgomery and Williams case: "Q. Did you see the two men who carried the guns? A. Sure. Q. They were both there? A. There was two that had guns absolutely, a .38 and a .45." Did you say that? A. I don't remember whether I did or not.

Q. If you said it, was it a fact? A. I don't know the make of a gun.

Q. You don't know a .38 from a .50? A. To the best of my judgment that is what I called them. I heard them called that. I don't know what they was.

I don't know how many men punched me in the face; I didn't count them. I don't know whether there was more than two or not. Sure, they punched me in the face; they knocked my head around. I wouldn't be positive they punched me in the face; jerked me around; they slapped me once kin'ly hard. I didn't say my nose was swollen. It did swell up a little bit. My cheeks were swollen a little bit. My lips were kin'ly cut. They was bleeding a little bit inside. I was cut inside of my lips a little. The place where I was struck my lips were bleeding; they was kin'ly busted. I don't remember about whether my cheek was also cut on the inside. My whole face was swollen up and bruised, black and blue kin'ly. I didn't examine my back after I got to the jail at Scottsboro after the trouble. As far as my remembrance goes, I didn't find any blood on my back.

The following then occurred:

Q. On the trial before Judge Horton, did you testify—page 64 of the record before Judge Horton—were you asked these questions and did you make these answers:

"Q. You lay on your back there for close to an hour on that jagged rock screaming? A. Yes, sir. Q. Was your back bleeding when you got to the doctor? A. I couldn't say. Q. When you got to the jail did you find any blood on your back? A. A little bit." Do you remember saying that? A. I probably did.

Q. When you said it, it was true? A. Yes, sir; if I said it, it was the truth, but I don't remember saying it.

Q. Did you find any blood on your back? A. I have answered your question.

Q. When you got to the jail at Scottsboro and looked yourself over, did you find any blood on your back? A. I told you I might have. I don't remember. That's been nearly three years ago.

I don't know whether this kind of rock that was in the gondola was the kind you find down on the railroad track. It was small, more like sand. I didn't look at it that close as to know whether it was different shapes. It wasn't fine sand. I wouldn't try to measure it. I know it is called chert.

The following then occurred:

Q. I don't care whether it is called "chert" or "chat" or "chet," the name means nothing to me. A. I can't tell you.

Q. You can't or won't—which is it?

Court: That question is improper and you have no right to ask it. It is my business to see that the witness is fairly treated.

Mr. Leibowitz: She is fairly treated.

Court: I don't think so. I think that question was entirely improper.

Mr. Leibowitz: We respectfully except. The attitude of counsel towards the witness when asking the question was such as to show contempt for her.

I said I couldn't give the jury there any idea how large that rock was that I lay there on, and I can't. I can't

give you any idea whether it was as fine as sand or larger; as large as the end of my little finger, down on smaller is the best I can say, but I wouldn't be positive.

I wasn't knocked down. I was picked up and laid down kind of hard on the chert. I don't think I testified in the previous trial that I was clammed down there on that rock. By the time I was thrown down I was all sore from the manhandling and pummeling that I got. I was sore all over my body, kin'ly.

There was one negro that pushed my head down and kept it down; he pushed me down. I tried to get up. When I was trying to get up he pushed my head back down on the chert. He didn't slam my head down. He kept my head down; he had a knife at my throat. He did not keep my head down with a knife in my face. When he put his hand on my face he did it kin'ly roughly. He didn't spare me in any way, he wasn't easy with me in any way. They naturally hurt my face. My face wasn't all scratched up. It was scratched a little bit, but not much. My face was bruised all over, kin'ly. I don't know whether or not the first negro that got on top of me was the one that threw me down. I wouldn't say that the one that threw me down was the first one that raped me or not. Some negro got on top of me. These negroes were milling all over the car; they was running up and down the side; some of them raped me and some of them Ruby Bates. One or two of these white boys were trying to get back on. While I was being raped some of the negroes that were not raping me were walking up the side of the car; not to keep the white boys from getting back on; just taking a walk—I saw all that, of course. While that raping was going on the negro boys were hollering out and laughing and cuttin' up, telling each other to hurry up and get through and let him get to it, and things like that.

This coat that I had on had a dark blue lining. It was dark enough so that white spots would show against it. It was a real dark blue. I don't know whether my hips were on that coat while I was being raped or not. I had

step-ins on while I was being raped. They had tore them apart. They didn't tear them off my body. Portions of my step-ins were on my body. They have elastic in them. I still had them on while I was being raped. They tore them apart like I said. I had three dresses on, too, while being raped. When the first man got through having intercourse with me, that didn't wet me all over. It wet me a little bit. It wet me around my private parts, kin'ly. When the second man got through I was still more wet. When the third man got through I was still a little bit more wet. So that as each man got off me I was more and more wet.

The following then occurred:

> Court: Do you know that of your own knowledge—did you notice at the time that you were, or did you pay any attention to that?
>
> Witness: I didn't pay any attention.
>
> Mr. Leibowitz: I most respectfully except to the Court's question.
>
> Court: It's the Court's business to ask a question at any time during the progress of a trial that he wants to, and if you want to reserve an exception the law gives you that right. You have your exception. Go ahead.

When the six men finished I don't remember whether I was real wet or not. I don't say that because of the question asked me by the Judge. I don't remember. That has been nearly three years ago. I am able to identify this negro that is sitting here by his face. I wouldn't try to point all nine of them out one by one. I know that the defendant was on the gondola. I recognize him after three years. There's lots of things that have happened that will pass from your mind in three years.

When they had intercourse with me they were not so rough about it. I don't remember whether my private parts bled. You have asked me that before.

The following then occurred:

Q. You wasn't quite so hazy about it on the last trial when you testified, were you? A. I was kin'ly bloody, a little bit.

Q. Did you will you say that blood came out of your private parts onto your clothes? A. No, sir; I don't say it came out on my clothes.

Q. On page 65 of the record of the last trial, before Judge Horton last spring, were you not asked this question: "Q. Were you bleeding from your private parts? A. A little bit." Did you say that? A. I said a little bit.

Just before the train got into Paint Rock, I started to adjust my clothes, and Gilley helped me to pull on my pants. I do not know a boy by the name of Gleason.

The following then occurred:

Q. Did you later meet a boy in Scottsboro, in the jail there, one of these boys that was on the freight train, and you found out that his name was Gleason? A. I don't remember his name.

Q. The boy known as "Texas"? A. Yes, sir; that is what they called him.

I didn't see "Texas" at Paint Rock.

Q. Did you see one of the white boys on the train? A. I didn't look for any of the white boys beside Gilley at Paint Rock. I don't know whether I saw them or not. I can't answer the question whether Gilley was at any time thrown off that train while I was being raped. No, sir. They put him off, but he climbed back while the raping was going on. I am sure of that. He climbed back after the other boys had been thrown off. When the attack started and they got all the white boys off he come back in the gondolier. When they started attacking us. The very first violence that was done to me was when they grabbed me and asked me was I going to put out, and I says, "No, sir; I don't know what that means," and he says, "You will or die," and I said, "I would rather die." I pushed them back, and when I pushed back, one of them grabbed me and hit me

on the head, and pulled me down. The first that grabbed me put his hands on my legs and shoulders and held me over the gondola. I wouldn't say whether it was before or after I was hit. I don't remember whether or not any one of these negroes grabbed me by the breast when he was raping me. No one grabbed me around the waist while they was raping me. No one of them grabbed me by the private parts or manhandled me in that way. I don't know what pain is to a man. I did suffer pain. They was kinder rough. They didn't tear my insides. I don't know whether they kicked me or not. The skin was torn in several places on my body, on my throat and on my face (indicating); not on my side; also on my back. I had one spot on my leg where it was skinned a little bit. I wouldn't say about where else. I wouldn't say the skin on my stomach was torn. It was bruised; I had some blue spots. It was sore and hurt when you touch it. I don't know whether I was black on my hips or not. They were kin'ly sore afterwards. My back was sore from lying on those rocks. After the train stopped at Paint Rock, I stood up in the gondola. I sat down while it was coming along, until it stopped, and then I got up on the edge when it stopped. I was lying in Gilley's lap until it stopped, with my head in his lap. I put my head in Gilley's lap after the negroes had quit raping me. That was five or ten minutes before the train stopped. The intercourse was over then. I wasn't doing anything. Ruby was sitting down with one of the negroes with his arm around her neck. I was lying down and she was sitting down. When the train passed the station, I was standing up looking. I don't remember whether the car that I was in passed the station or not. After the train stopped, Gilley got up, and after a couple of minutes I got up from lying down. I was sitting up when the train stopped. I was lying down when it stopped, when the train stopped Gilley got out of the car, and I sit up like I am now. I did not continue to lay in the gondola after the train stopped. No sooner than the train stopped than Gilley got out, and I

sit up. I don't know whether I or Gilley called out to any man along there for help, or say, "Hey," and call the attention to anyone. I don't know anything about that. They were all hollering and going on around there. When I sat up, I was not alone two minutes while Gilley was gone. Ruby was still standing there. Ruby started to climb out. I wasn't in there after the train stopped over a second. Ruby climbed down and I got out. After Ruby climbed down, I stood up by the gondola for the first time. Gilley didn't wait to help me off the gondola. I started to climb down after Ruby got down. I was still in the last car in this string of gondolas next to the box car. I am as sure of that as anything I have testified. We were in the gondola next to the box car where the raping took place. I am sure of that. I did not see Gilley standing there. When I got off I fell. I didn't see Gilley before I got off; I didn't look for him. I don't know what happened to Gilley. I fell there beside the gondola. The gondolier I was on is the one I fell off. That was the last one next to the box car. It was towards the caboose. After I fell there, I don't know what happened until I got to the store. I was taken to the store and the doctor called. A man they said was a doctor examined me in the store. I have not seen that doctor since in court in any of the trials. I don't know him. He told them to rush me to Scottsboro. They sent me on to these other doctors because I was in such a bad condition. I was in a very bad condition at Paint Rock. From Paint Rock I was in Scottsboro in about an hour and a half. The doctors that examined me were Dr. Bridges and Dr. Lynch. They first examined me in the hospital room, on the side of the jail. They didn't examine me much there; they kin'ly looked us over. I still had on my coat, my cloak, with the blue lining, my overalls, the three dresses and the step-ins and the shirt. I had a shirt on that day, too, and a hat, shoes and stockings. I had on those clothes right in the jail. After Dr. Bridges looked me over in the jail, he then took me to his office. I had taken off my

overalls and two of my dresses, and washed and cleaned up in the hospital room in the jail before I went to his office. I did wash my clothes in the jail, but not that day. I did not wash any of my clothes in the Scottsboro jail before the doctors made an examination of me. I don't know whether I went to the doctor's office with my coat on. I did not have on my overalls in the doctor's office. I pulled my overalls off and two of my dresses. I had on one dress, step-ins, and my stockings. When the doctor made an examination of me in his office, he told me to take my clothes off. I did that, and he looked me over on his table. At his office my face was still bruised and swollen. My nose was swollen a little bit. My lips were cut kin'ly on the inside. My cheek—the skin was kin'ly scratched a little bit in a few places. The doctor looked at my face and examined me. He had me turn around and looked at my back. He looked at my legs and stomach, looked me all over. I had washed my face in Scottsboro. Yes, sir; I washed my hair, too and combed it. I didn't wash my head before I went to the doctor's office. I had combed my hair before I went to the doctor's office. I was kin'ly nervous and excited in the doctor's office. I don't know whether I was excited or not. Ruby Bates done most of the talking at the doctor's office; I did very little talking.

I don't know whether any of the negro boys pulled Gilley back in the train; he was in the far corner. I could see him, but I wasn't paying any attention. To the best of my knowledge and remembrance, I think I did see him. I think the negroes was pulling at something. I seen Gilley in the corner. I wouldn't say to be sure that I saw him pulled back on the train. My best recollection is they pulled him back. I wouldn't say for sure that they pulled him back. The negroes pulled back into the car, the boy named Gilley, and let him stay there on that car all the time that these negroes were raping me and Ruby Bates. He was there in the corner of the gondola.

Re-direct Examination:

These are the step-ins I had on on that occasion (indicating). After this occurrence I washed these step-ins. I washed my clothes the next day, part of them, all of them except my overalls; I wasn't able to wash them. I kept these step-ins in my possession up until the trial held in this court room last spring.

The following then occurred:

Mr. Bailey: We offer the step-ins in evidence. No objection was offered at that time.

Q. Examine this knife, Mrs. Price (hands knife).

Mr. Leibowitz: We are objecting to the introduction of the step-ins. I would not have objected if they had been brought in with all the dirt and stuff on them. But when she brings in something that she later washed, I am objecting to their introduction.

Court: The objection is overruled.

Mr. Leibowitz: Exception.

That is my knife. I had a knife in this gondola during the occurrence I have testified about. One of these negroes taken it off'n me. The next time I saw the knife was in the court room at Scottsboro. One of the law had it then. Mr. Woodall brought my knife out of the court room.

The following then occurred:

Q. Mr. Woodall brought the knife out of the court room? A. Yes, sir; they asked me if that was my knife.

Mr. Leibowitz: We object to that.

Court: Overruled.

Mr. Leibowitz: Exception.

Q. That is the time you next saw it? A. Yes, sir.

Court: About the step-ins, of course you will have to follow that up and show that they are in the same condition they were in at the time she washed them.

The testimony continued as follows:

That garment is in the same condition now as it was when brought into court back in the spring, in this court room. They are in the same condition they were in immediately after the rape, except that I have washed them. The knife is in the same condition.

The following then occurred:

Mr. Leibowitz: We object to the knife.

Mr. Bailey: She has identified the knife and testified that one of these defendants took the knife away from her.

Court: The step-ins are in evidence, but I will exclude the knife for the present.

Re-cross Examination:

There was four hands grabbed at me (indicating), this way, to tear these drawers apart. I don't know whether they scratched me in the crotch or not in ripping these things open this way. There was a few scratches to the best of my remembrance. I never paid no attention to whether I bled from the scratches when they ripped the drawers apart.

I don't know what the negroes had on. I didn't pay attention. They had clothes on. While they were having intercourse with me they had on clothes, sure they did. When I was assaulted and while I was resisting I don't know whether I scratched any of these negroes in the face. I struck at them. I hit some of them until they held me. I don't know whether I kicked some of them or not. I don't remmber. I did not tear the clothes of any of them.

I did not put up a fierce battle. I don't remember being asked before Judge Horton whether when Dr. Bridge and Dr. Lynch examined me they saw my coat at that time and it was all spattered over with semen. I don't remember whether I answered, "Yes, sir." I don't think I made that statement.

W. H. HILL, sworn for the State, testified:

Direct Examination:

On the 25th of March, 1931, I was the station agent of the Southern Railway at Paint Rock, Alabama. I have been employed there forty-four years yesterday. On that day I was present at the station when a freight train traveling west was stopped, or stopped there. I saw some colored men on there. When I first saw them they were on a coal car, or what we call a chat car. You may call it a gondola. They were all over the car and when the car stopped they were taken off by the officers at Paint Rock. The first I saw of the two white women they had reached the ground. They were standing at the side of the car, at the east end of the same gondola car that I saw the colored men in. I know Victoria Price. She was one of the women that I saw there.

The following then occurred:

A. Apparently she had fainted.

Mr. Leibowitz: We move to strike that out.
Court: Overruled.
Mr. Leibowitz: Exception.

Ruby Bates had her arm around her supporting her. They went across to a shade tree near the track. I don't know whether Victoria Price walked over there; I couldn't say. I wasn't looking and didn't notice the women as they walked away.

Q. They were both together at that time? A. Yes, sir.
Q. You said one of them was in a faint?

Mr. Leibowitz: We object to that.
Court: Overruled.
Mr. Leibowitz: Exception.

Cross Examination:

(Mr. Leibowitz then showed a picture to the witness.)

That is the shade tree where those women were taken to, near the water tank (indicating).

(Picture received in evidence as No. 2 without objection.)

The following then occurred:

The tree you have pointed out, I am going to mark with a cross—is that the shade tree? A. Yes, sir.

Q. I have marked over that cross "Shade Tree"; am I right? A. Yes, sir.

Q. Where is that water tank? A. That is the tank there (indicating).

Q. I am going to mark in there a black mark near the shade tree, an arrow pointing upwards, and mark that the "Water Tank"; is that right? A. Yes, sir. These women standing at the side of this gondola car, this coal car, walked across to that shade tree. Looking this way, at Paint Rock Station, towards Huntsville and Decatur, that located the station on the left side of the train. So that a train coming into Paint Rock going to Huntsville, the station is on the left side. Then there is a water tank something like about 200 feet from the station. That is a maintenance house at the end of the walk. The water tank is 200 feet past the station on the way to Huntsville. About 200 feet from the water tank, along the line, is a coal chute on the other side of the track. It is on the right side of the track, and not on the side where the

station is. These women, when I saw them, were on the side of the gondola, and it was somewhere in between where the tank would be and the coal chute, and they walked across to this shade tree. The car was about midway between this house and the coal chute. They were nearer the water tank than the coal chute when I saw them opposite the gondola car.

The following then occurred:

Q. Please make a cross on this about where you saw this car from which you say these men were taken from. A. I would say about there (indicating).

Q. Mark your initials there also, please. A. (Witness does so.) That is where the car was that the women got off. From there they were taken over to the shade tree.

(Photograph is handed the jury.)

The photograph shows a portion of the station platform towards Huntsville and Decatur, which would be west. It is 200 feet from the platform down to the water tank. The engine stops for water at the coal chute; it takes water and coal at the same time. The coal chute is about 200 feet further than the water tank.

I saw a white boy where those girls were. I saw him get off the train. He was off the train before I saw him. I saw two white boys later uptown at Paint Rock. I didn't see them get off the train. None of the white boys spoke to me at the train; uptown they did. None of the white boys said anything to me or in my presence about what happened. I did not hear any white boy speak up and say anything in the presence of the girls as to what happened.

Re-direct Examination:

Stevenson is thirty-eight miles from Paint Rock. That train reached Paint Rock around 2 o'clock in the afternoon, 1.50 or 2 o'clock in the afternoon.

PERCY RICKS, being sworn for defendant out of order, testified as follows:

The following then occurred:

Mr. Leibowitz: I offer in evidence the same photographs that I offered in the Patterson case; they are Defendant's Exhibits Nos. 1, 2, 3, 4 and 5. I offer them in evidence representing the view in and about the station. I think it is necessary for the jury to be able to follow this witness, that they have these photographs before them.

(Explains pictures to jury.)

The examination of the witness was then begun:

One of these box cars is about 40 feet long. There is about 3 feet between two cars hooked up together. If you had seventeen cars back of the tender—fifteen cars back of the tender—the distance would be fifteen times 40 feet, plus 3 feet between each car. If you stop a train that had an engine and tender, with fifteen cars behind it from here to here (indicating miniature train), that last car would be about 700 feet from that coal chute. The station is about 400 feet from the coal chute. The fifteenth car in that train, when the engine pulls up to the coal chute, would be approximately 300 feet past the station. The fifteenth car wouldn't be along about the station, but would be way back up the line. I have been fireman on this train on the Southern Railroad for fifteen years, year after year. I remember that train leaving Chattanooga. I was the fireman on the train when it left Chattanooga. Coming out of the tunnel this side of Chattanooga, through the mountain there, on the way to Stevenson, the train slows up after coming out of the tunnel; it is upgrade there. Well, after we left the tunnel after leaving Chattanooga we was running slow, and we got down to about two miles an hour because we had to receive orders to cross over the N. C. & St. L. Then after we leave Wahatchie we are going up the mountain, and gets down to around twelve miles an hour, and from the top of the

mountain, down the, speed would range from fifteen to forty miles an hour. An additional freight car was taken on that train at Stevenson. That car was hooked in about a car length back of the engine as I remember. We set out some cars and backed up and picked up one car at Stevenson. We crossed from the N. C. & St. L. over to the Southern tracks at Stevenson. I saw two white women and a white man get out of a box car after we crossed over to the Southern. The next place I saw them was at Paint Rock. I saw them going back towards the end of the train. I didn't pay any particular notice to them, where they go on. There is a bend there before you get to Paint Rock. When we got to that point, we slowed down. The brakes were being put on.

As the train slowed up coming around that curve I noticed men on each side of the track with rifles. I noticed them way up here up the line at the station to where the coal chute was. They was mostly on one side, on the left where the station is. There were approximately fifty to seventy-five, some with guns and some with pistols, stretched along that entire piece of track. I was on top of the tender when we got to the coal chute, where the train stopped. Everything back of the engine was back of the coal chute. I was standing there (indicating) about the center of the coal tender on minature train). The engine I was on has a platform running from this point here (indicating), which makes it about the same height as the box car. The Southern tenders is flat top; that is a round one. When I stopped I saw all these men on both sides of this train. When I got on this board here (indicating), I could see all the way down, and I looked back to see what was happening on that side. I could see on both sides of the train. At Paint Rock, after I had gotten on top of the water tank, the train came to a stop. As we approached there they began to swarm the train, before we stopped. I saw men surround the oil tank way back, it seems that the first colored men was taken off there first. I saw the women get off about the center of that string of

gondolas; that would be about the eleventh car from the engine that I saw the women get off that car. I was standing up on the tender. I did not see anybody else get off that car besides women; I did not see any colored men get off that gondola. When I saw these women get off this gondola on to the ground, they were on the right-hand side, that would be next to the station. When they got off they started towards the engine. They started hurriedly. I would say they started to run. Now, as they were running towards the engine, they were finally stopped by a crowd of men that surrounded them. They first started towards the engine, and turned is as the group closed in on them. Then they finally stopped.

(Mr. Leibowitz called the witness' attention to the picture, No. 4.)

I see that shade tree there. That is the water tank there. And that is the coal chute where I stopped. The water tank was on the other side of the track, 200 feet away. I saw this shade tree there, but I did not see these women, after they stopped, taken across to this shade tree. Nobody didn't go there.

Cross Examination:

I was on the tender of my engine on that day. The colored boys were seemingly taken off the box cars below the tank car. I don't remember exactly how far below the tank car the box car was; it was somewhere back there. I know there was some empty box cars back there, because they got out of them; they couldn't get out of a loaded car; they were taken out of box cars, and they must have been empty. Loaded cars are sealed.

I do not know Mr. Hill, the gentleman that is the station agent at Paint Rock. I do not know Mr. Tom Taylor Rousseau at Paint Rock. I do not know Mr. Brannum at Paint Rock.

I saw two men taken out of a box car near the tank car. I am not sure that the box car was below the tank car.

Q. Was it below or in front?

Mr. Leibowitz: We object.
Court: Overruled.
Mr. Leibowitz: Exception.

I don't know which cars were loaded. I know they were taken out of a box car near that tank. I don't remember whether it was in front of the tank or behind. I did not see Haywood Patterson on the tank car. I don't know Clarence Norris, the defendant.

The following then occurred:

Q. I believe you stated that you didn't know whether the cars behind the tank car were loaded or empty?

Mr. Leibowitz: We object to that. Overruled.

I know that two men was taken out of a box car near the tank. I don't remember whether it was in front or behind it. I saw them taken out of the car. I didn't see them walking with any stick. I could see the rear of the train. I seen the cars, I haven't figured out whether it was 800 feet from where I stood to the oil tank car. A box car is higher than an oil tank. The oil tank is probably 2 or 3 feet lower than the box car. I could see the oil tank car from where I was standing on the tender of my engine. I know what I had on the train and I watches back. The train was on a straight line.

Re-direct Examination:

There is more than 400 feet between the station and the bend. Standing on my engine, that tank car was not around the bend.

TOM TAYLOR ROUSSEAU, sworn for the State, testified:

Direct Examination:

I am Mr. Tom Taylor Rousseau. I live at Paint Rock. I was in Paint Rock on or about March 25, 1931, when a freight train was stopped there at Paint Rock. I was on the left of the track the train came in on, looking towards Memphis, on the same side the depot is on. I saw some colored men taken off the train. There was nine in all, seven got off on the side that I was on, and two on the other side. I seen the other two men get down on the far side, and then they brought them back between the cars next to me. The first I saw of the nine men, they were getting out of the gondola, crawling on the box car ahead, towards the engine. I did not see the two girls, Victoria Price and Ruby Bates, until after they got off the train. I didn't pay any attention to which gondola they were beside when I first saw them. I noticed they were getting out of a gondola car. I didn't see the girls in the car. They were lined up—three or four minutes, or five, I guess, after these defendants were arrested I noticed the girls. I was coming from the track the first time I saw them. Victoria Price was sitting in a chair. They were going from the depot towards town, towards the main street. She was being carried in a chair. She had her head down this way (indicating) with her eyes closed.

With reference to being clean or dirty, she looked pretty nasty to me, as far as I could see. I was pretty close to them, but I never paid them much mind when they went by. I do not know Percy Ricks. I am not acquainted with the firemen on these trains. My recollection is that when I first saw the negroes they were getting out of a gondola something like this far back (indicating), that first gondola, somewhere along there, climbing out on the box car next to it. These negroes were climbing on the box car. The first time I saw the negroes they were

in the gondola. The first time I saw them was about three-fourths of a mile away, as the train came around the bend, about three-fourths of a mile away. I seen a bunch of them.

The following then occurred:

Q. (By the Court) What direction were they going when you first saw them? A. They were all standing up, like they were coming forward, like that——

Mr. Leibowitz: We move to strike that.
Court: Overruled.
Mr. Leibowitz: Exception.

Testimony continued:

I got up the track a piece further, I knew the engine would stop at the coal chute, and next time I turned around and noticed them they were getting out of the gondola on top of the box car. I did not see anyone take anybody off about this oil tank car, or out of any box cars immediately near it.

The following then occurred:

Q. Did you see all the men who were taken off the train?

Mr. Leibowitz: We object to that because it is leading, and puts the answer in the witness' mouth.
Court: Overruled.
Mr. Leibowitz: Exception.

A. Yes, sir.

Cross Examination:

There was one negro that I took off myself. I had a little trouble getting him off. I helped to take them all off, too. Not personally by myself, I didn't. Some other men took them off. Some on the right and some on the

left. The ones I took off were on the side nearest the station, on the left. I saw some men in some car way up here around the bend, some negroes getting out of a gondola on a box car. We were all watching to see what we could see. I did not see any women get off the train. I saw no women there at all.

LEE ADAMS, sworn for the State, testified as follows:

Direct Examination:

My name is Lee Adams. I live at Stevenson. On or about March 25, 1931, I was up there on the side of the Southern Railroad, hauling cross-ties, about a mile from Stevenson, Alabama, towards Scottsboro. I was near the Southern Railway track. I saw a freight train on that occasion and I saw some people in a gondola car on the railroad. There was something between, I expect, fifteen or twenty people altogether. I was about half a quarter from the track. I saw these people fighting, knocking and scuffling like there was a fight in the car. I saw a man strike this way (indicating), and then looked like he picked something up. It looked like he throwed some person out of the car, out over the top of it. They were all in the car there, but there was two standing together, and I seen one strike down this way (indicating), the second time, down in the car, and then the car passed out of my seeing, but it looked like he threw another person out. There was a good many in there, and the train was going fast, about thirty miles an hour. Well, there was two of them engaged in putting that person out of the car. There was some negroes in the car—some of them had their backs to me. I saw two white men in the car. I don't know whether they was the two I saw threw off or not.

I was on the right side, going from Paint Rock to Stevenson. These men were put off on the opposite side of the train from me. After the train rolled on I saw two men.

They come on up the railroad, I would say I was, I expect, thirty or forty steps from me. After they got down in the cut, I was on top of the cut, and I saw them, and one of them had a handkerchief in his hand wiping his head this way (indicating), it was red, and then he taken his shirt sleeve in this position (indicating) and wiped the blood off his face and head that way. His head appeared to be bleeding. The other one was walking along there; they were walking along up the railroad. I couldn't tell whether he was hurt; they was walking along side by side.

Cross Examination:

I didn't see any women in that gondola car where that fighting was going on. The most I seen was a lot of folks in the train; it was going very fast.

W. E. BRANNUM, sworn for the State, testified:

Direct Examination:

I live at Paint Rock. I was in Paint Rock the day that freight train stopped there, and some parties were taken off the train. I was on the right-hand side coming towards Huntsville, on the other side from the station. I saw some colored boys on the train before it stopped. The first time I saw them they was on the train, between a quarter and a half quarter from me. I couldn't tell what kind of a car they were on until the car got closer up to me. I kept on watching them until they got up closer. I don't think they were still on the same car they were on when I first saw them. I couldn't see what they was doing. They climbed out of this car on another car. I didn't see any women on that car when the train pulled up. As I was going down the train I saw one woman climb down, like on the end of a gondola car, and as I got to where I could see between the cars, this woman sunk to

the ground. I do not know who that woman was. I have not found out who that woman was, or what they called her. I saw this one woman at the car. The next time I saw the woman supposed to be her, they had her in a chair toting her up in town. No, we didn't take time to notice her appearance. I had something to do with taking these negroes off the train or arresting them. I can't identify the negroes I arrested. I don't know whether or not I arrested the defendant over there. It has been a long time since it happened. I don't recognize the defendant as one of the men I arrested. I saw him there after the train was gone. Some white men were there making the arrest. We didn't know them. They were all there. All the men and a bunch of colored boys. The defendant looks to be one of the men there, but I am not sure about it. I can't identify him.

The following then occurred:

Q. With reference to this car that you saw this woman opposite of, I will ask you whether or not, in your knowledge, that was the same car that the negroes got off of, or some other car?

Mr. Leibowitz: That is manifestly unfair to ask the man that question. He is putting the answer in his mouth.

Court: Overruled.

Mr. Leibowitz: Exception. I want to object on another ground; the witness hasn't said that any woman got out of any car.

Court: Sustained.

Mr. Bailey: I said the car she was opposite of, Judge.

Court: All right. He wants to know if there were any negroes arrested in that car by which she was standing as the train slowed down, or when it stopped?

Witness: I don't exactly understand the question.

Court: You said that you saw a woman on the opposite side, when you were on the opposite side and got to where you could see between the cars, you saw a woman sink to the ground?

Witness: Yes, sir.

Court: Now, they want to know whether or not, at any time there, while you saw that train come to a stop, or while it was slowing down, or after it stopped, whether you saw any negroes get off that car by which she was standing, then or after?

Witness: No, they had left the car.

Court: Did you see them leave the car?

Witness: Yes, sir.

Q. Did you on that occasion see anybody taken off a tank car down here (indicating) or off of any box car immediately near it? A. No.

Mr. Leibowitz: I object to that. I submit that he should be asked if he looked.

(No ruling.)

Cross Examination:

That is the water tank that was near the station (indicating). I see the arrow pointing towards the coal chute. I wasn't between the coal chute and the water tank. I was somewhere about this maintenance house; somewhere about halfway between this water tank and this maintenance house, but I was over on the other side of the train.

The following then occurred:

Q. I am going to make a mark right here on this maintenance house—that is what you call it? A. Yes, sir.

Q. (This is Exhibit No. 4.) Will you make a little cross on this other side as showing about where you were standing in between the maintenance house and the water tank? A. I don't know whether I could get that exactly.

Q. Maybe we can get at it this way: How many feet is it between the maintenance house and the water tank? A. Well, I would suppose that is about 25, maybe 35 feet; I can't say positive; I didn't measure it.

Q. When you were standing at that point, you looked through these cars, two cars, and saw this woman sink down to the ground, between these two cars? A. About where I showed you there?

Q. Yes. A. Yes, sir.

Q. When you stood there between the maintenance house and the water tank, am I correct in saying that you were about 250 to 300 feet this side of the station? A. You mean where I was standing back to the station?

Q. Let me put it this way: It has been testified that the station is about 400 feet from the coal chute, is that right? A. That is somewhere in the neighborhood of it.

Q. It has also been testified that the water tank at that time was about 200 feet from the station; in other words, the water tank is about halfway between the station and the coal chute? A. Yes, sir; that's about right.

Q. Now, what I am trying to get at is this: At the time you saw this woman, looking in between the two cars, you were standing at a place between the coal chute and the water tank, somewheres along in there (indicating)? A. No, I wasn't between the coal chute and the water tank; I was on the same side that the coal chute is on, but the water tank is on the other side.

The water tank was not nearer the station than I was. At the end of the platform there is the maintenance house. The water tank is about 50 feet from the maintenance house. The coal chute was on the other side of the road. The coal chute was on the right. When I saw this woman as I looked between the cars I was on the right-hand side of the water tank and the railroad. As I face it, I was right of the water tank. I can't say how many feet the water tank was from me as I was standing there on the side of the railroad, or how near I was to the coal chute when I saw this woman; it wasn't 100 feet. I can't say

how many feet it was. I wasn't nearer the coal chute. I wasn't the same distance from the right of the water tank as I was from the coal chute. I was on the right of the water tank as I faced it. As the train came along, there was a track between me and the main line that the train was on. I was standing on the other side of that track. I wear glasses for close seeing, for reading. Yes, sir; I can see the man back there (indicating a man standing at the back of the room). I can tell you the color of the man's clothes. You might say he is dressed in blue; he has got on blue overalls. I would say the back of the room is about 40 feet, or 35 feet. I don't know whether, at a distance of 80 feet, I could distinguish a colored man from a white man. I never tried it. There was no more excitement around there than usual, when anything would turn up like that was. Men were there with revolvers and guns.

If the hat represents the depot and the book the maintenance house and the pitcher the water tank and the further book represents the coal chute the track was then running beyond that hat, that book and that pitcher. I was across the track from there (indicating). I was somewhere about halfway between this maintenance house and the water tank when I saw the woman sink to the ground, on the other side of the train from me, between the two cars.

J. ARTHUR WOODALL, sworn for the State, testified:

Direct Examination:

My name is Mr. J. A. Woodall. I live at Stevenson. I am engaged in the general mercantile business. I operate a store. On March 25, 1931, some two or three or four white boys come to my store. One of them had his head cut open, another was bleeding around the body, and the others were scratched up a little. I lent them water and towels to clean up, and gave one of them a shirt. Five

came. I carried four and Mr. ....., carried the other to Scottsboro. Upon my arrival at Scottsboro I saw someone else bring to this jail house some colored men that evening. I remember nine. They were supposed to have been brought from Paint Rock. I know Mr. Simmons, the chief deputy. He was chief deputy at that time.

The following then occurred:

Q. Did you search, or help search any of these nine negro boys that were brought there? A. Mr. Simmons—

Mr. Leibowitz: I must object to that.
Court: Overruled.
Mr. Leibowitz: Exception.

A. (Continued) —and me searched them.

I searched the defendant and found a pocket knife and a fifty-cent piece. That is the knife I found on the defendant (indicating knife handed to the witness). I know it by that little place right there (indicating). When I took this knife from this defendant, Mr. Lon Talkington and Mr. Simmons were present. All the negroes were there. Neither I nor anyone else in my presence made him any threats or offered him any inducements to make a statement. I asked him where he got the knife and the half dollar. He said he took it off of one of the white girls.

Cross Examination:

The following then occurred:

Q. I am going to read to you your testimony before Judge Horton, and will ask you if the testimony isn't just as you gave it, from page 289 of the official record, were you not asked these questions and made the following answers: "Q. Examine the knife (indicating)? A. I got the knife off of one of those negroes. Q. Can you tell which one? A. No, sir, I can't tell you now," and didn't you answer this question on the same point, on the following

page, question: "I don't know which one of the negroes I took it off of. I did know when they had the trial in Jackson County, but I couldn't say now." Do you remember saying that on the last trial here? A. Yes, sir.

Re-direct Examination:

At that time, this defendant was not in court. I see that defendant now and I recognize him as the one I took the knife off of.

Re-cross Examination:

I can remember this negro three years after I saw him.

Re-direct Examination:

I testified on the trial in Scottsboro. That defendant was in court when I testified in Scottsboro. I testified there that I took the knife off of him.

Re-cross Examination:

The following then occurred:

Q. Have you been in the Scottsboro jail yourself since the defendant was there, charged with murder? A. Yes, sir.

Mr. Knight: We object to that.

Court: I sustain that objection. The question was illegal and I sustain the objection to it, and the answer was an illegal answer, and that is excluded from you, gentlemen—that statement is not testimony in the case, and you must not give it any consideration whatever in arriving at your verdict.

Mr. Leibowitz: We except.

C. F. SIMMONS, sworn for the State, testified:

Direct Examination:

I am Chief Deputy Sheriff in Jackson County. I was Chief Deputy in 1931. I can identify the defendant as having been put in the Jackson County Jail on March 25, 1931. He was brought there in company with some other colored boys. After he was brought there, he was searched in my presence by Mr. Arthur Woodall and myself. We found a small white-handled pocket knife and fifty cents in money. That is the knife that was taken from him (indicating knife handed to the witness). At the time he was searched and this knife was found on him, neither I nor anyone else in my presence held out any hope of regard to get him to make a statement. Neither I nor anyone in my presence threatened him in any way. There were eight other persons there under arrest along with him.

The following then occurred:

Q. Was he charged with any offense at that time?

Mr. Leibowitz: We object to that.
Court: Overruled.
Mr. Leibowitz: Exception.

A. Yes, sir.

Q. Did anybody ask him whether or not he had committed any offense?

Mr. Leibowitz: We object to that.
Court: I overrule the objection.
Mr. Leibowitz: Why, your Honor——
Court: That will do, Mr. Leibowitz. I have overruled the objection.
Mr. Leibowitz: We except.

A. I think Mr. Woodall asked him what he had done. He said they was accused of rape. I believe that's all he said at the present. He didn't say that he had raped anyone.

The following then occurred:

Q. Did he say that the others had committed rape?

Mr. Leibowitz: I must object to that.

Mr. Knight: I propose to show ——

Court: Wait a minute. Was that in the same conversation you were inquiring about?

Mr. Knight: Yes, sir.

Mr. Leibowitz: May I be heard on a proposition of law?

Court: Wait a minute. At any time did you or anyone hold out any hope of reward, or make any threats, or offer him any inducement, or did any body do anything threatening towards him or make any gestures towards him, to get him to talk?

Witness: They did not.

Mr. Leibowitz: May I question him? Were there men with guns on them around there?

Witness: I had on a gun myself. I don't know whether Mr. Wosdall had one or not.

Mr. Leibowitz: Were there any men there with guns, around him?

Witness: No, sir; we were in the run round of the jail.

Mr. Leibowitz: You had a gun, didn't you?

Witness: Yes, sir.

Mr. Leibowitz: Right after they were arrested, wasn't it?

Witness: I judge about an hour and a half after they were arrested.

Mr. Leibowitz: There was a big crowd around the jail, wasn't there?

Witness: No.

Mr. Leibowitz: Any crowd around the jail?

Witness: Well, I guess maybe there was half a dozen people around the jail.

Mr. Leibowitz: You called troops there that night, didn't you?

Witness: Yes, sir.

Mr. Leibowitz: For the protection of the defendants?

Witness: I suppose that is what they were called for.

Mr. Leibowitz: So that they wouldn't be lynched?

Witness: For protection.

Mr. Leibowitz: For protection against lynching?

Witness: Nothing was said about lynching.

Mr. Leibowitz: For protection against mob violence?

Witness: Yes, sir.

Mr. Leibowitz: You found it necessary to do that, didn't you?

Witness: Yes, sir.

Court: Now, your question.

Q. You said he was accused of rape? A. Yes, sir.

Q. You say that he didn't say that he had committed any offense? A. Yes, sir.

Q. What did he say?

Mr. Leibowitz: May I object to that on the ground that any admission is only admissible when it is against interest. He may not have had anything to do with any part of it, and it is incompetent and immaterial at this point. Admissions of anyone must be against interest, and any statement, I submit to the court, most respectfully, at this particular time is incompetent, irrelevant and immaterial unless there was an admission of guilt on the part of the defendant; any other statement about any other people in their presence is not competent.

Court: I'll overrule the objection.

Mr. Leibowitz: We reserve an exception.

A. He said the rest of the boys did, but he didn't. He said that the knife was his. He said nothing more than that to Mr. Woodall. I don't remember whether he

said anything about taking it from any woman. That's all I remember of the conversation. That knife was taken off of him.

Cross Examination by Mr. Leibowitz:

I was not a witness in Scottsboro. This is the first time I have been on the stand. This is the first time in three years that I have been on the stand.

TOM DOBBINS, sworn for the State, testified:

Direct Examination:

My name is Tom Dobbins. I live out this side of Stevenson, two miles from Stevenson on this side. I was at home on or about March 25, 1931. Some time during the noon hour, between 12 and 1 o'clock, I noticed a freight train pass, going west. At that time I was 50 to 75 feet from the railroad track. There was two boys standing at the wood pile, about 25 feet away from me. I seen some people in a gondola as the train passed. I don't know how many. They were mixed up, some were colored and some were white. I could not tell whether or not there were any women in that car. They were scuffling and fighting in this gon as it passed my house. I could not tell anything about any of the particulars of the fight. I just seen them scuffling and fighting as they passed by. Approximately four or five were engaged in the fight in the corner of the car. I couldn't tell whether they were colored or white; they just looked like they were fighting. I could see this much of their bodies above the top of the car (indicating head and chest). Sam Mitchell, this old negro in the witness room, was right there at my wood pile. The wood pile was right in my front yard, 50 or 60 feet from the train. It was closer. I was in the yard and he was at the wood pile. The wood pile was in front of my house.

Cross Examination:

I testified in Scottsboro before Judge Hawkins and a jury. I told my story there.

The following then occurred:

Q. I am going to ask you this—now, listen, please. Do you remember the lawyer on that case asking you this question: "Who did you see on it?" and did you answer that this way: "As well as I recollect, there was three darkies in a box car standing in the door in front of this gondola where these people were scuffling; a boy of mine called attention and hollered at me, and as I came to the door I seen them scuffling and it run in behind the barn from the door from me"? Do you remember saying that? (That is from page 108 of the Weems-Norris record.) A. No, sir.

Q. Can you read? I would like for you to read this over carefully, as to what you told the jury in Scottsboro. I am reading now from the official report. Would you mind reading it over (offers book to witness)? A. I don't recollect nothing like that.

Three darkies was in a box car back next to the caboose. They was scuffling around in the gon, and these others was back here (indicating both cars). Well, the scuffling was going on in the gondola; that was up towards the front of the train. When the front of the train passed by, I saw three darkies standing in a box car near the caboose.

SAM MITCHELL, sworn for the State, testified:

Direct Examination:

My name is Sam Mitchell. I work for Mr. Dobbins. I was about his house, near the wood pile, about the 25th of March, 1931. I saw a freight train pass there that day, about 1 o'clock; we was going back to work. I was

working over in the field plowing. We saw some people that looked like they were fighting on the train that day; looked like they was rastlin' on a gondola car. I can't tell how many of them were there. It was a mixed crowd.

Cross Examination:

I saw some negroes in some box cars all the way from the engine towards the caboose as the train passed by; there was a whole lot of them in the cars. After that gondola in which I saw the wrestling going on passed, from where I was standing at the wood pile, I saw some other colored men or boys on different cars along the train towards the caboose. Where I saw that wrestling going on in that gondola car, the car passed on by me. I saw men in that wrestling around, white and colored. I couldn't tell you whether I saw any women in that car; they all looked like men to me.

R. S. TURNER, sworn (out of order) on behalf of the defendant, testified as follows:

Direct examination:

I reside at Sheffield, Alabama. I was the conductor on this freight train on March 25, 1931, when there was some trouble and some negroes were taken off. That train went from Chattanooga through Paint Rock. I have been with the railroad thirty-two years. When I started with the railroad thirty years ago some box cars were 40 feet, and some 50 feet long. A box car is about 40 feet long. There is a space between these cars of about 3 feet. For every car there would be an additional 3 feet in length. The engine that was on that freight train was one of the big engines. I suppose that the engine is approximately twice the length of a box car, 75 or 80 feet. That engine that day stopped at the coal chute to take on coal and water

both. We get coal and water both at the coal chute. The tender stops at the water tank, and the coal is put in the front end of the tender, and the water at the back end of the tender. There ain't the distance as it is between the box car, not as much; there is about an 18-inch platform across there, between the engine and tender. The tender is about 30 to 40 feet long. The engine and tender together is about 80 feet. From the front part of the engine to the end of the tender is about 80 or 90 feet. I haven't ever measured it. That would be about 3 feet between the tender and the box car. That would be 88 feet and 40 feet for the first box car, would make 128 feet.

The following then occurred:

Q. 3 feet space in between that would be 131 feet?

Court: You don't have to go down and figure it out all the way.

Q. No, sir; I want to know if I am right in saying that adding 85 feet for the engine and tender, and 43 feet for each of these cars, going down to the fifteenth car, including the fifteenth car, if that would give the distance to that car, the fifteenth car away from the coal chute at the time the train stopped?

Mr. Knight: We will admit that.

I kept a record of that train exactly as it was made up. The engine and tender came first, then a box car, another box car and then a coal car, then four more box cars; then eight gondolas, then three more box cars, then an oil tank car, and a flat car; that is the way the train went out of Stevenson, and that is the way it arrived at Paint Rock. These coal cars are lower than a box car. That there car will come up to about a foot of the top of the box car. There was eight of these (indicating gondolas). They are higher than the sides of these. We call

them the law sides. They would be of that same height as that there, but chat wouldn't be loaded in cars like that. When I went up this train after some negroes were taken off, I found a snuff box in either the fourth or fifth car from the head end, as I come over the train after we left there.

Cross Examination:

We did have this oil tank car right here (indicating). We had twenty-one cars back of that flat car (indicating). Some of them was empty, and there was some tanks. I had two empty box cars, one, the fifth, I believe, and the other the third car from the caboose. I was in the caboose when the train stopped at Paint Rock. I got off when it stopped. I got off not on the side the depot is on, but on the south side; on the same side the side track was on. I looked out and saw all these men and told my flagman there must be something the matter, and asked him if he knew what it was and he said not. I went on up the train up about these coal cars. There was no one around the caboose when I stopped; they didn't come back that way. They was all over on the other side when I got up there. I did not see them take anybody off this tank car here (indicating). I saw two girls under a tree. One was sitting down and the other had her head in her lap. Of course, at that time, I didn't know what was happening.

The following then occurred:

Q. I believe you testified about some men being along the section of the gondolas—

Mr. Leibowitz: He didn't say that.

Court: Mr. Leibowitz, you have no right to tell what the witness said or didn't say; the jury is the judge of that.

I didn't see any men at all on the gondolas. There were men all up and down the train, as far as I could

see. I walked on up to the gondolas after I got off the caboose. I reckon I must have been along there. The sheriff told me not to move the train until they had made a search of the train. They did not take anyone off of the oil tank car. I walked up the train on the right-hand side. I did not see any negroes on the oil tank car, nor on any other car.

Re-direct Examination:

These box cars have doors on each side. If the doors on one side are closed, it is perfectly possible for an empty car to have the doors open on the other side. These three box cars along there this side of the oil tank car were loaded with merchandise. They were sealed up. The box cars were empty, but I don't know whether the doors were open or not. My record shows that they were empty. They were the only empties, the third and fifth box cars from the caboose.

DR. E. R. BRIDGES, sworn for defendant (out of order), testified:

Direct Examination:

I am a duly licensed physician, licensed to practice under the laws of the State of Alabama. I am a resident of Scottsboro and have been for a number of years. I am a general medical practitioner. I treat all kinds of medical cases that come to a medical doctor. I examined Mrs. Victoria Price on the 25th of March, 1931, on the day some trouble is said to have happened on a freight train. I saw her first at the jail house in Scottsboro. It was something around 4 o'clock in the afternoon, probably a little after. I saw her in company with some other girl, Ruby Bates. I did not examine her there at all when I first saw them. I just saw two women. I told them to take them over to my office, where I could make a more

private examination. When Victoria Price came to my office, I told her to undress herself. I removed her clothes from her waist down. From her waist up she had on her clothes. This was in my presence. After she removed her clothes, I gave her a physical examination. I don't remember seeing any cut on the top of her hand from which any blood came. I did not find any bruises on the face. I don't remember finding any puffed up lips, or swollen lips. If I had seen that, I would have noticed it. We were looking for those things.

Q. Were you instructed by the authorities of Jackson County to make the examination?

Mr. Knight: That is objected to.

Court: Sustain the objection.

Testimony continued:

I made an examination of the face. I didn't see anything. I didn't see any blood. I was examining her for the purpose of finding marks, if possible, and I made note of everything I saw. I don't remember finding any scratch on her face. I did not examine the chest of this woman on that day; I did the next day. I did examine her abdomen. There were no cuts on the chest nor any cuts on the abdomen. I examined her back. There were no cuts on the back from which blood would come; no cuts on her legs; no abrasions or skin rubbed off on the legs; no tears of the skin near the privates at all. The vagina was not torn in any way. I found a couple of scratches on the wrist of one arm, and on the forearm of the other. I knew these women were taken off a freight train. I heard that; I didn't know it. I did not find any lacerations of any kind outside the scratches on the wrist and forearm. When I examined this woman, her pulse was not fast; it was in the bounds of normal. The respiration was about normal, too. A person under excitement, as a rule, especially a woman, would show a rapid pulse and rapid breathing. If a woman came into court and made

believe she was fainting, threw herself over in this fashion, if she was just faking or shamming a faint, a doctor could, as a rule, find that out by feeling her pulse, but not always. They can fake it sometimes mighty well.

The following then occurred:

Q. Tell us, doctor, supposing a woman had been hit in the head with the butt end of a gun—let me put it this way, suppose that a woman came into court and testified, that is assuming a state of facts for the purpose of a hypothetical question—assuming that a woman came into court and testified that she had been hit on the head with butt end of a gun, the wound from which bled—

Mr. Knight: I object to the question.
Court: I will wait until he gets through.

Q. (Continued) —and supposing further that she states that she was seized very violently, and states further that she was struck several blows in and about different parts of the body, including the face, and supposing that she was picked up and held over the sides of a gondola car by her legs, and then pulled back around, and thrown down on some rough material known as chert, and suppose then, and there one of the assailants pushed her head, that is the head, in a violent fashion, put his hand on her face roughly, and supposing further that this man that threw her down had intercourse with her, and supposing that while the intercourse was going on, he tore at her breasts, taking hold of her in and about the breasts, and suppose that six men in succession had intercourse with this woman, against her will, while she was struggling and squirming, and resisting, on this rock, or chert, and suppose, doctor, that she lay on this rock or chert on her back and on her side for over an hour, screaming and struggling with these heavy men on top of her, and suppose after that, she was taken off, and suppose that she claimed that she was in a faint, for a few moments, and was taken to a nearby point to a doctor's office—what would you expect to find on her

body—can you state with reasonable certainty what would be found on her body; would you not find more evidence of violence and assault than a mere couple of scratches on the wrist and forearm, or the throat?

Mr. Knight: We object to that.

Court: The objection is well taken. The question is not based on the evidence.

Mr. Leibowitz: We except.

Cross Examination:

I testified at Scottsboro three years ago. Without the testimony I don't have a distinct recollection of saying that I saw bruises on her throat. In the afternoon when I examined her I examined her from the waist down. She had on her dress from the waist up. I examined her back the next morning. I found a small blue spot about like a pecan in the small of the back. She had some scratches on one wrist and forearm, several small scratches. I can't be expected to remember every detail at this time. There might be a few little ones that I overlooked, something like that. I don't remember how many cases I testified in in Scottsboro. I think in two of them. They did not bring the colored boys over to my office that day. I don't remember whether they were brought in the hospital room in the jail while I was there. I saw one of them in the court house. I don't know whether I saw the defendant in there. I don't know one of them by name.

Redirect Examination:

The following then occurred:

Q. You have been a witness in every case for the State, haven't you?

Mr. Knight: We object to that.

Court: Sustain the objection. That he has appeared as a witness is enough.

Mr. Leibowitz: We except.

Recross Examination:

I stated to Mr. Leibowitz that her pulse was about normal when I examined her in my office.

The following then occurred:

Q. Is it possible that a person who has gone through quite a strain could regain a normal pulse in a couple of hours after the strain?

Mr. Leibowitz: We object to that.
Court: Overruled.
Mr. Leibowitz: Exception.

A. In how long?

Court: The question he has asked is, is it possible in a couple of hours?

A. Yes, sir.

Q. When you examined Victoria Price on the following day, was she not in a hysterical condition on that day?

Mr. Leibowitz: We object to her condition on the following day as immaterial.
Court: Overrule the objection.
Mr. Leibowitz: Exception.

A. Yes, sir.

Q. I will ask you if it is not sometimes the case that where a woman is normal after going through great excitement, the following day she will be in a highly nervous condition?

Mr. Leibowitz: We object to that.
Court: Overruled.
Mr. Leibowitz: Exception.

A. Yes, sir.

I don't remember seeing bruises on Victoria Price's throat at this time. I might have sworn that she did before. We forget in two and a half or three years. I don't remember.

Re-direct Examination:

I made some notes in my office at the time I examined her. I do not have them with me. I had them here the other day. The things I put down were things I found on the body, a history of it. I did not put down any cuts on the head; nor swollen nose; nor any battered or puffed-up lips; nor any skin torn on her. I don't remember putting down any injuries or wounds, but some scratches on the wrist and forearm and a blue place on the small of the back. It is possible that she might have had a cut on her lip that we overlooked, and a little blood, and it is possible she might have had her nose mashed that we overlooked, but if there were lacerations of the skin we ought to have seen them. Cuts on the skin would not disappear in an hour and a half.

Recross Examination:

Dr. Lynch probably saw them more frequently than I did. He was county physician and health officer.

ORVILLE GILLEY, sworn for the State, testified:

Direct Examination:

My name is Orville Gilley. I was born in Jackson County. I live in Marshall County now and have lived there since 1929. On March 25, 1931, I was on a freight train between Stevenson and Paint Rock, Alabama. I was riding on an oil tank. I rode that oil tank to Stevenson, and then got off that oil tank and went and got on a gondola car that day. There were seven white boys and two white girls in the gondola car I was on that day. We didn't just meander up there and get in the gondola. I can't say positively which gondola it was.

The following then occurred:

Q. Point out the one you think it was, according to your best recollection (indicating miniature train)? A. I am not positive which one it was; it is between these two; it was or the other.

Mr. Leibowitz: We move to strike that out.

Court: Overruled.

Mr. Leibowitz: Exception.

Q. When the seven white boys and the two girls got in that gondola, did anybody else get into it? A. The negroes?

Q. Yes?

Mr. Leibowitz: I object to the language of the prosecutor, when he answers yes after the witness, on the ground that it is wholly improper and not legal and should not be permitted.

Court: I didn't hear him say that, but that is a very common thing with lawyers on both sides. I'll sustain your objection, if you think you are hurt, and will exclude it.

The colored boys when they came into the gondola car came from back towards the caboose. One of them said: "All you white sons-of-bitches unload." Then they started battling and made some of the boys get off, and attacked the girls. Two white girls were in that gondola car besides the white boys. I don't remember exactly how long the fight lasted. Some of the white boys were put off the train. I was not put off the train. They held me in the car; I stayed in the car; they tried to push me off, and when I got back Patterson held a pistol on me.

The following then occurred:

Q. I will ask you did you see anything else happen; I believe you testified they made some of the white boys get off, did you see anything else happen? A. Yes, sir, they attacked the girls.

Mr. Leibowitz: We move to strike that out.
Court: That statement is out.

Q. What did they do? A. They threw the girls down on the chat in the car and raped them.

Mr. Leibowitz: We move to strike that out.
Court: That part of the answer that they raped them is out.

Q. Just tell exactly what you saw the colored boys do.

Mr. Leibowitz: We object to that unless he identifies this defendant with it.
Court: Overruled.
Mr. Leibowitz: Exception.

A. They threw the girls on the chat, and some of them held them, and other went on them; they taken it time about.

Q. They were lying on top?

Court; Did they have sexual intercourse?

A. Yes, sir.

Q. Did you see that defendant there that day? A. Yes, sir, I did.

Q. Did he have sexual intercourse with Victoria Price there that day in that gondola car?

Mr. Leibowitz: We object to that.
Court: Overruled.
Mr. Leibowitz: Exception.

A. I can't say which one, or whether he went to both. I can't say he did go to but one of them. It happened between Stevenson and Paint Rock. I don't know how far out of Stevenson. I think it started just a few minutes after we started from Stevenson. After they started to have intercourse. I was sitting in the car; they told me

tools out, and some were holding the girls, they were taking it turn about, and when I went up, this largest negro there was on Victoria; by that time her eyes were bulging out of her head, and I said, "Don't you see they are killing that woman." I said to Patterson——

Mr. Leibowitz: We object to that unless he identifies the defendant as doing that.

Court: Overruled.

Mr. Leibowitz: Exception.

I said to Patterson, he is the one that had the pistol, "Don't you see they are killing that woman" and he seen it too, and he says, "You have all done fucked; you are going to kill that woman, get up," and he said, "If anybody else tries to cut these women again, there's going to be some negroes jum off'n here." Then they let her alone, but they didn't let Ruby up, and I sit down and held Victoria Price's head in my lap, and when we got to stay in this end of the gondola up there from where they were, and they were running up and down with their down to Paint Rock they taken them off. Her overalls were on then. I pulled them up for her. The overalls were pulled down when they were having the intercourse.

The following then occurred:

Q. When you got down to Paint Rock, did you get off the gondola car?

Mr. Leibowitz: What's the use of putting his answer in his mouth each time; it's leading, and I object to it.

Court: Mr. Leibowitz, I know that is absolutely necessary at times. I know that it is improper to lead a witness, but there are some things you can't get from a witness without leading him. I overrule the objection.

Mr. Leibowitz: I note my exception.

When I got off the train I went from Paint Rock to Scottsboro. Victoria Price and Ruby Bates went to

Scottsboro, too, in the same car with me. When the train stopped at Paint Rock there were several men there.

The following then occurred:

Q. Did you see any of the colored boys there at Paint Rock?

Mr. Leibowitz: We object to that.
Court: I'll overrule that.
Mr. Leibowitz: Exception.

A. Yes, sir, those that did the raping.

Mr. Leibowitz: We move to strike that out.
Court: Motion is overruled.
Mr. Leibowitz: Exception.

Q. Did you see the defendant at Paint Rock?

Mr. Leibowitz: We object to that.
Court: Overruled.
Mr. Leibowitz: Exception.

A. Yes, sir, I did.

Q. After the colored boys, one of whom was the defendant, had intercourse with the two girls, when they started to get out of the gondola, in which they had the intercourse, when the train stopped— A. When the train stopped at Paint Rock?

Q. Yes, which way did they go? A. Towards the engine.

Q. Did any go towards the caboose?

Mr. Leibowitz: We object to that.
Court: Overrule the objection.
Mr. Leibowitz: Exception.

A. (No answer was made.)

Q. They went towards the engine? A. Yes, sir.

At the time I counted the colored boys in the gondola there were nine.

The following then occurred:

Q. Did you see any of them leave it? A. When the train stopped at Paint Rock they started towards the engine.

Q. Were those the only ones you saw leave the gondola?

Mr. Leibowitz: We object to his telling the witness what to say.

Court: Overruled.

Mr. Leibowitz: Exception.

A. Yes, sir.

Q. Tell me whether or not the defendant was in that gondola car from the time the attack began until the train began to stop at Paint Rock?

Mr. Leibowitz: We object to that.

Court: Overruled.

Mr. Leibowitz: Exception.

A. Yes, sir.

He went towards the engine when the train got to Paint Rock.

Cross Examination by Mr. Leibowitz:

Victoria Price and I have not rehearsed together this story I told to-day. I have visited the house of Victoria Price in Huntsville three times since I came back south. I went to see how her and her mother was getting along. Before this trouble happened on the train, I didn't know Victoria Price. Before this trouble happened, I didn't go to Mrs. Price's home. I had never visited them before. Just about three years passed next March. I met Victoria Price in Huntsville in Mr. Douglass Taylor's office. I went to see Victoria Price to see her and her mother, how they were getting along. That was the first time I went, about two and a half years after this trouble happened.

I didn't go to see Victoria Price and sit down and cook up this story. I didn't go to compare notes, use the same language and use the same expressions, after three years.

I am an entertainer. I recite poetry and take up collections. I just recite the general kind of poetry. I have made up pieces of poetry, I recite pieces, I don't make them up. I have made two pieces of poetry.

Q. Are you capable of making up things in poetry form? A. (No answer made.)

After three years I went to Montgomery to see Mr. Knight.

Court: Wait a minute. Mr. Sheriff, take the jury into that room. (Jury retires.) Gentlemen, I am doing all in my power to see that the State of Alabama, and this defendant get a fair and impartial trial under our law, and under the evidence in this case, and I am going to do it if I can get the proper assistance from the parties engaged in this trial. I have tried to be respectful to everybody connected with this case, but notwithstanding that fact, at times it has appeared to me that the very purpose of counsel was to see if I could not be nagged into saying something or doing something that was improper. So far, I haven't done it, and I am not going to do so, but I think that counsel is not treating the Court with due respect. When I make a ruling, to slam a pencil down on the table showing dissatisfaction with the ruling is not my idea of the ethics of the profession in their treatment of the Court. I want you to desist from that. You will be properly treated as an attorney and as a gentleman, but I don't think you ought to persist in the attitude you are assuming in this case towards the Court. Now, I hope you will bear that in mind. I make some allowance, and will make some for attorneys when a ruling is disappointing to them, but they should restrain themselves from making a public exhibition of displeasure. I am

going to try this case like I try all, and any other case. I am not trying this case for newspaper notoriety, that give big head lines to anybody connected with it. I am opposed to that and have taken that course all the way through. I hope that you will bear some of these things in mind, and will conduct yourself accordingly. Mr. Sheriff, let the jury come back.

(Jury return to box.)

The following then occurred:

Q. I want to know if you went looking for Mr. Knight? A. I went down there to see Mr. Knight. I went to find when the trial——

Mr. Leibowitz: I move to strike that out. I asked him if he went looking for Mr. Knight.

Court: Objection is overruled.

Mr. Leibowitz: Exception.

I went down there to see when this trial was to come up. It was in October of this year that I went. That was not the first time I had seen Mr. Knight. I saw Mr. Knight before that about the 7th or 8th of August of this year, at Huntsville, Alabama, by appointment. I went from Decatur over to Huntsville to see him. Huntsville is the place where Victoria Price lives. I went there to see when the trial would come up. I did not go to Victoria Price's house to find out when the trial come up. I went to Huntsville to see if he knew anything about when the trial would come up; the sheriff and Mr. Knight was away, and I went to the police department and one of the policemen called up Mr. Knight and asked if he wanted to see me, and made an appointment to meet me at Mr. Douglass Taylor's office in the Tennessee Valley Bank Building.

I get around on freight trains. I figured that the sheriff in Huntsville would know when the trial was set. I figured that he would know, I didn't know where the trial was going to be. I did not know where it was before.

I did not know Mr. Knight was at Decatur. I didn't know where he was. I didn't go to Jackson County because Huntsville was closer, and I thought I could find out there. The first time I went there I saw Victoria Price at the same time I saw Mr. Knight. She came in when Mr. Knight was in the Tennessee Valley Bank Building. She came in at the same time Mr. Knight did. I sat down and had a talk after she left. She wasn't brought there to tell her story that I know of. I didn't hear her tell her story. I don't know what the reason was that she came there for. I know she come in some time before I did and I was there after she left. After she went away from there, I went to visit her. I went from where I was with Mr. Knight to see her. I catch my train there close to her house. I went there to catch a freight. I went to her house to see her mother. I never saw her mother before. I was just interested in seeing her mother. I sit down for a little while and we talked. When I got off this train at Paint Rock I got off the car I were in where this trouble happened, I am sure. I do not remember seeing Mr. Hill, the station agent, there. There were several men there.

I got off before the girls. I went up the train. I didn't wait there then for the girl. I didn't stop there, I went up the train. I don't remember exactly how far, not so very far. There was people all around there. There were people near this gondola when I got off the train. I don't know how many people of Paint Rock were near that gondola when I got off. I don't know whether there were more than five. The people came up the train. I didn't see them come straight to my gondola. I went up that way. I kin'ly trotted. People were all up and down the train. Before I stopped I trotted past a few cars. I don't know how many. I didn't count them. I don't know how many feet I trotted. I have been in the room there for several days with Victoria Price and the other witnesses. I can't say whether I have spoke to any person in the witness room or not, that I spoke to on that day.

I did speak to somebody there. I spoke to a bunch of men. I don't know if they are in court or not. I didn't go back to find out how the girls were, there at Paint Rock. I didn't see them again until they got to Scottsboro. I didn't go in the same car. I didn't see the girls get off the gondola. After I talked to these men, or crowd of men at Paint Rock, I did not go back to the gondola that the girls were in, so that I could say to them "See the girls there in that gondola." Nobody stopped me from doing it. I wasn't under arrest. When I got to Scottsboro I saw Victoria Price get out of an automobile. I didn't notice one of the white boys go over to her and talk to her. I first met Victoria Price at Chattanooga, the evening before this happened.

The following then occurred:

Q. Was she with Lester Carter and Ruby Bates at that time?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Leibowitz: Exception.

Q. Where was it that you met her in Chattanooga? A. Down at the railroad tracks.

Q. I am going to ask who she was with at that time?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Leibowitz: Exception.

Q. Did you buy her some food at that time?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Leibowitz: Exception.

Q. Did you and Victoria Price and Ruby Bates and Lester Carter spend the night together and have intercourse in the hobo jungle opposite the freight yards in Chattanooga?

Mr. Knight: We object to that.

Court: Sustained. Gentlemen of the jury, when a question is asked and it is objected to and the Court sustains the objection, that put the question out of the case, and out of your minds, and any answer made to it goes out with it and is not to be considered by you at all in arriving at your conclusions in this case.

Mr. Leibowitz: Exception.

These girls, Ruby Bates and Victoria Price, and Lester Carter and I got on the train at the same time at Chattanooga. We got on the oil tank at the same time. We were all in one body; we went out and got on the train at the same time.

The following then occurred:

Q. You had been together for some time before that, hadn't you?

Mr. Knight: We object to that.

Court: Sustained.

Mr. Leibowitz: Exception.

We four got in the gondola car, and some other boys got in, too. It isn't true that Lester Carter and the girls and I went off by ourselves and got into a different gondola car from the one in which the other white hoboes were riding. I don't know whether after the train pulled out from Chattanooga some of the white boys started throwing rocks at the rear of the train where the blacks were riding. We were on the same oil tank with the other white boys at the same time. I didn't see any rock throwing. I wasn't in a position to see it if there had been. I didn't hear any noise or any bantering between the whites and blacks, or the calling of names between the two sets. I didn't hear a single thing or any confusion whatever, not until after that, not until after we got out of Paint Rock. I meant after we left Stevenson, instead of after leaving Paint Rock. I did hear commotion be-

tween the whites and blacks over the whole territory from Chattanooga to Paint Rock. They came over the top there and said, "All you white sons-of-bitches unload." I did not hear any commotion between Chattanooga and Stevenson. I don't know what started the trouble between the whites and blacks. After we left Stevenson, the train did not go slow. I don't know of any place after leaving Stevenson when the train slowed down so that you could almost walk beside it. None of the white boys threw rocks at the colored boys after the train left Stevenson. I don't know of any commotion between the whites and blacks, before the blacks came over into the car, after the train left Stevenson. I don't remember seeing the black boys jump over the heads of the girls into the car which we were in. The girls were sitting in the gondola when the black boys came into the car. I was sitting down there (indicating); they were sitting on that side (indicating) and I was sitting down this way. There was some other boys around there. I just got in the gondola with the boys, and the girls was in there, too. We all got in there about the same time. I had just been on the oil tank with these girls. I met them up there at Chattanooga. Carter got on the train.

The following then occurred:

Q. Was he with them before they got on the train?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Leibowitz: Exception.

It isn't a fact that when we got in the gondola we four sat together, the two girls and we two fellows that were with them. We were kin'ly facing them from where we were sitting. I wasn't talking to them. I didn't see the girls talk to the boys. We boys were singing. I was kin'ly lying on my side at the time, kin'ly facing the girls. The other boys were sitting around there. The train makes a lot of noise, clanking along with all these freight cars.

I can't say whether it makes more noise than a passenger train. I have ridden freight trains for about seven years, since I was fourteen. I know what is meant by hobo. I am not a hobo. I have rode freights. I have rode freight for seven years, but I am not a hobo. I recite my poetry on the streets mostly. I have not recited poetry on the streets since I have been in Decatur. I have not recited poetry on the streets of Huntsville. I have not recited poetry on the streets of New York City. I have recited in hotel lobbies. I can't give you the names of any hotel where I recited poetry in the lobby. I would recite on the street and someone would maybe ask me to come in the lobby. I can't mention the name of any hotel anywhere where I have recited poetry. I don't go up North in the winter time. I was in San Francisco last winter. I have recited poetry in some of the cities here in the South on the streets. I have recited poetry in Mr. Knight's town and made collections on the street. I just went on the street corner or on the street and recited my poetry and got a bunch of people around me, daytime or nighttime. After I recite poetry, then I collect from the people there around me. That is how I make money to live. I have worked with my hands since I was fourteen years old, in a factory. I have worked in a factory, but not on a farm. This girl Victoria Price washed my shirt in the Scottsboro jail. Well, we wasn't mad at each other. I was not a witness in Scottsboro in the first case. They didn't call me to testify at any time in this case right after the trouble. They didn't call me in the second case. I don't remember which case they called me in. I didn't lay in jail while these cases were being tried; I was in the witness room. After the cases were all over, they let me go. Then I rode freights. I have seen Victoria Price in Huntsville three times. I have seen Victoria Price twice at Huntsville and once here. After August 7th, I saw Victoria Price in Huntsville in September. I don't know what date it was. I had been on a tour of entertaining in the meantime.

The following then occurred:

Q. That carried you over different parts of the country?

Court: I think you have gone far enough on that.
Mr. Leibowitz: Exception.

I went back to Huntsville to find out when the trial was going to be. Mr. Knight said for me to be back in September. He didn't say when in September.

The following then occurred:

Q. Why did you go to Huntsville?

Court: You have been over all that. I wouldn't take up time with that.
Mr. Leibowitz: Exception.

I saw Victoria Price again. That was the third time. It was about the 1st day of June that I first saw her, then again on the 7th or 8th of August, and then the next time was in September. I went to Montgomery in October to see Mr. Knight to see when the trial was coming up. I was making a determined effort to find out when this trial was going to be, so that I could give my testimony.

The following then occurred:

Q. Was that out of a spirit of public service?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Leibowitz: Exception.

The State has been supporting me while I have been here. Since I have been here it has sent money to my mother. The State has sent my mother $9 since October. All the other white boys were knocked off the train but one; one stayed on the train. John Gleason stayed on the train. He didn't stay in the car, he stayed on the train. John Gleason was one of the white boys in that gondola.

John Gleason left when the fight started. I didn't see him leave the car. When the train got to Paint Rock he was there. He was taken from Paint Rock to Scottsboro with me. The other boys got off the train. When they started to battle, they began to get off, and a couple of them were knocked in the head. That left me the only white boy on the car. I didn't try to get off too. I didn't want to get off. I remained on the train. I didn't climb down in between two of the gondola cars in here (indicating), they pushed me kin'ly over the end and I got back in. There was several around there. One tried to choke me and one had a pistol. They tried for a little while to put me off and then decided to let me alone.

The following then occurred:

Q. Your story is that you, a white boy, with ten or twelve negroes on that train, in that car, after they put off all the other boys, knocked them off—is it your story or do you claim the fact to be that twelve negroes let you stay on that car while the twelve negroes were raping two white women? That is what you want these men to believe, that they let you stay on this car while this raping occurred——

Court: That is argument. Gentlemen, that is ruled out.

Mr. Leibowitz: Exception.

Re-direct Examination:

I testified that I was in the witness room at Scottsboro when these cases were first tried. I testified before the grand jury at Scottsboro. I testified in some one of the cases that were tried at Scottsboro at that time. I told Mr. Leibowitz about having seen you in Mr. Douglass Taylor's office in Huntsville. That was the first time I ever saw you in my life. Ruby Bates was in the gondola.

The following then occurred:

Q. Did some of these negroes have intercourse with Ruby Bates at the same time?

Mr. Leibowitz: We object to that.
Court: Overruled.
Mr. Leibowitz: Exception.

Yes, sir. I saw some of them have intercourse with Ruby. The defendant was in that car.

Re-cross Examination:

After three years I could pick out some of the others if you lined them up here with a bunch of other negroes. I could pick them all out one by one from a bunch of fifty negroes, and you could, too, if you had been in my shoes. I counted them after I saw their faces. There was nine at the time I counted them. At the time I counted them, there were nine. I counted them twice more after that and there was nine. I didn't see any of the negroes jump off those gondolas, not until we got to Paint Rock. I can't say how many stations we passed while these negroes were running up and down those gondola cars with their privates hanging out. I can't say how many stations we passed. I didn't see any stations between Stevenson and Paint Rock.

The following then occurred:

Mr. Knight: There has been no return on the attachment for Luther Morris, and, of course, I can't use the testimony of Mr. Morris on the Haywood Patterson trial without the consent of the defendant——

Court: I thought it was agreed that if you didn't get him here, that you could use it?

Mr. Knight: That was the agreement on Saturday, but I don't know whether they will agree to it now.

Court: I can't stop the trial to wait to get a witness in here, but I will let you examine him out of order provided he is here before the case is over.

Mr. Knight: All right, sir.

Mr. Leibowitz: Is that the State's case, except Mr. Morris?

Mr. Knight: Yes, sir, the State will rest, except we want to put Mr. Morris on should he get here.

STATE RESTED.

Mr. Leibowitz: We now offer the deposition of Ruby Bates.

Mr. Knight: I have interposed several objections to the questions propounded to Ruby Bates, and which I think will be sustained by your Honor, in view of your holdings heretofore, and I suggest that before he reads the questions, that the jury be excluded while we determine which are proper to read and which are not.

Court: Is there any objection to that?

Mr. Leibowitz: Yes, sir.

Court: Well, we will proceed in open court. Gentlemen of the jury, that same rule of law that I told you about a while ago, that when a question is objected to, when propounded to a witness here on the stand, and I sustain the objection, puts that question out of the case, and also puts out any answer that may be made thereto, so you don't let it have any lodgment in your mind; that rule of law also applies to a deposition. Whenever a question is asked and objection is made and sustained, it is just the same as if the question was never answered.

Mr. Leibowitz: There has been a severance in this case, but before the severance the deposition was taken on behalf of all the defendants, and now only one is on trial, and I'm wondering if there is going to be any objection to the deposition on that ground?

Mr. Knight: I am willing that he should introduce the deposition in this case; the State has no objection to it.

Mr. Leibowitz: I want to offer in evidence this commission to take the deposition, signed by Mr. J. H. Green, Clerk of the Court, and all of the captions thereon. I am offering in evidence the interrogatories propounded by the defendant, by his attorneys, and certified by Mr. Green, under the seal of the Court, numbering thirty-three interrogatories. I want to offer to read the interrogatories on behalf of the defendant; I want to read the interrogatories referring to them by number, and read the answers, also referring to them by number.

Mr. Knight: Now, the State objects to each and every question propounded to the witness Ruby Bates, and will say, at this time, I will have specific objections to each question as it is asked, and the State objects to any rebuttal interrogatories propounded, separately and severally, on the ground that the State had no opportunity to cross the witness on the rebutting interrogatories. Mr. Lawson now states that he was served with a copy of the rebutting interrogatories.

INTERROGATORIES OF RUBY BATES.

1. What is your name?

A. Ruby Bates.

2. How old are you?

A. Nineteen now. I will be twenty on my birthday, March 4, 1934.

3. Do you know Victoria Price?

A. Yes.

4. When and where did you first meet her?

A. In a textile mill in Huntsville, Alabama, in the year 1929.

5. Do you know Lester Carter?

A. Yes.

6. When and where and under what circumstances did you first meet him?

(This question was objected to by the State. The Court sustained the objection and the defendant excepted.)

The excluded answer was as follows:

A. Well, I met him on a city chain gang in January of 1931 in Huntsville, Ala.

7. Do you know Jack Tiller?

A. Yes.

8. When and where and under what circumstances did you first meet him?

(This question was objected to by the State. The Court sustained the objection, and the defendant excepted.)

The excluded answer was as follows:

A. I don't remember the date when I met him. I met him with Victoria Price in a cotton mill in Huntsville, Alabama.

9. Where did you reside in 1931?

A. At home in Huntsville, Alabama.

10. With whom?

A. With my mother and brother and sister.

11. Prior to March 24, 1931, were you in company of Victoria Price, Lester Carter and Jack Tiller or either of them, especially in said month of March?

(This question was objected to by the State. The Court sustained the objection, and the defendant excepted.)

The excluded answer was as follows:

A. Yes, I was in their company on March 23 and 24th, 1931.

12. State specifically what occurred between you and them or either of them?

(This question was objected to by the State. The Court sustained the objection and the defendant excepted.)

The excluded answer was as follows:

A. On March 23rd, in the afternoon about 5.30, it was nearer 6 o'clock, Victoria Price, Lester Carter and Jack Tiller and myself walked up the Pulaski Pike and then we turned off at the Pulaski Pike after we had gone something like a mile or two miles. I don't know exactly how far it was that we walked up the Pike. We went off into a side road. We walked along this road until we came to a big ditch and then we saw these vines on each side of the ditch where we couldn't be seen. We got over in the vines. There were sexual intercourse between both couples, Lester Carter with myself and Jack Tiller with Victoria Price. Later in the night it began raining, so we moved from there and walked to the N. C. & St. L. Railroad, and at first we couldn't find any empty box car and then we went to the Southern Railroad, where it crosses the N. C. & St. L. Railroad, and we couldn't find any empty box car there. We went up the N. C. & St. L. Railroad and we found a box car there on the side track. We got into this box car and later in the night there was sexual intercourse again. We also built a fire in the box car to keep warm, with paper that was in the box car.

12. What conversations, if any, did you have prior to March 24, 1931, and in the said month of March, with Victoria Price, Jack Tiller and Lester Carter with reference to a proposed trip out of the City of Huntsville, Alabama?

(This question was objected to by the State. The Court sustained the objection. The defendant excepted.)

The excluded answer read as follows:

A. On the morning of March 24th, early in the morning about 5 o'clock, Victoria Price, Lester Carter, Jack Tiller

and myself were together and it was discussed between us about leaving that day, which was on Thursday, March 24th, and we planned to meet at 11 o'clock that day on the Southern Railroad at the Athens Crossing.

14. Did Victoria Price have intercourse with Jack Tiller a day or two before March 25, 1931, in your presence and in the presence of Lester Carter?

(The question was objected to by the State. The Court sustained the objection. Defendant excepted.)

The excluded answer was as follows:

A. On the night of March 23rd, yes.

15. What occurred on March 24, 1931, in your presence between Lester Carter, Jack Tiller and Victoria Price?

(The question was objected to by the State. The Court sustained the objection. Defendant excepted.)

The excluded answer was as follows:

A. I don't know what they mean. Unless this is the answer. Jack Tiller did not go with us on account of his wife. Of course, we was all talking. There was nothing done except talking and Jack Tiller said for us to go ahead and that he would join us in a few days and that he did not go on account of his wife.

Q. Did you, Lester Carter and Victoria Price board a freight train in the City of Huntsville, Alabama, and proceed on said freight train to Chattanooga, Tenn.?

1 A. Yes.

17. State the details and circumstances concerning the said ride mentioned in the preceding paragraph.

(The State objected to the question. The Court sustained the objection. The defendant excepted.)

The excluded answer was as follows:

A. When we first got on this freight train going to Chattanooga, we got in a box car. The box car had a lot of white men and also there was some colored men in the

car but did not speak to us for a long time. There was one boy in the car who knew myself and he came to where we was. We was in the other end of the car and he was at the other end of the car with the rest of the hobos. When he got off the train he said "Good luck" to us. The train pulled into Chattanooga that night about 8.30.

18. Upon arrival at Chattanooga, did you meet one Orville Gilley? State the circumstances of such meeting, who was present, and what was said by Victoria Price, Lester Carter and you and Orville Gilley.

(The State objected to the question. The Court sustained the objection. The defendant excepted.)

The excluded answer was as follows:

A. Yes. We was looking for a box car to stay in that, because we knew no one in Chattanooga, Tennessee, where we could stay. While we was looking for this box car, Orville Gilley was coming meeting us, coming in a direction to us and we coming meeting him. Lester Carter and Victoria Price and myself were present and Orville Gilley was by himself. Lester Carter asked him for a match. Then he wanted to know what we were doing and where we was going—so we told him we was looking for a place to stay for the night and he joined our group to try and find a box car that was fit to stay in. Most of them was dirty on the inside and some were almost rotten down. When we couldn't find a box car, Orville Gilley said that he knows a place, he knew was the hobo jungle, a place where we could rest. We all got arms' full of shingles from the box cars and took them over and built a fire.

19. State in detail what occurred during your stay in Chattanooga between you, Orville Gilley, Lester Carter, Victoria Price and others, until the morning of March 25, 1931.

(The State objected to the question. The Court sustained the objection. Defendant excepted.)

The answer excluded was as follows:

A. On the night of March 24 after we had built a fire, Orville Gilley and Lester Carter went to get something to eat. Of course, we couldn't see where they went, because I don't know. When they came back, they had something to eat and also some coffee and a small lard bucket to make the coffee in. After we had eaten what they got, we were sitting by the fire and Lester Carter and myself spread out on Lester Carter's overcoat on the ground and laid down and we dozed off to sleep. That's all that happened that night that I remember.

20. What transpired on March 25, 1931, between the hours of 6 A. M. and 3 P. M.?

Mr. Knight: The State objects to that—some parts may be admissible, but some parts are not. I am objecting to that part of the question that calls for anything prior to boarding the train at Chattanooga on March 25th.

Court: I can't pass on it until I see the answer.

(Court takes answer and reads it.)

Mr. Leibowitz: This testimony, whatever it is, is offered for the purpose of impugning the chastity of Victoria Price, not for the purpose of attacking her credibility, but to explain away the condition the girl was found in by the doctor—the question is for that purpose, and not for attacking her credibility.

Court: I'll exclude all of her answer, beginning on page 5, down to and including the word "West" on page 6.

Mr. Leibowitz: Exception.

(The excluded part of the answer is included in brackets from beginning of answer. After the brackets close, answer is admitted.)

A. [On the morning of March 25th, Lester Carter and Orville Gilley went again for something to eat, and while

they was gone, Victoria Price and myself got some water from a branch stream that was running near the place where we stayed that night to wash our face and hands. Before Lester Carter and Orville Gilley left for food, we moved over into another place from where we stayed that night. After we finished washing, we was sitting there and talking and two men spoke to us and said "Good morning" and asked us if there was anything they could do for us. We told them there was nothing they could do. Then they went on. Later, there were two negro men went by and they spoke to us and said "Good morning." They asked if they could bring wood to put on the fire for us. We told them we was letting the fire go out. Then they wanted to know if we were alone there. We told them we was not alone. That's all that was said between us and they left. Then Victoria Price looked over into another place where there was a bunch of hobos and she said, "If I knew that Lester and the other boy—who introduced himself to us as "Carolina Slim" and later told us his name was Orville Gilley, would not come back soon, we would go over there and make some money from these boys." Then we went up on the railroad and we were sitting on the railroad and we saw Lester coming down the railroad, and when Lester joined us, Victoria Price told Lester that we had been insulted by a negro and it made Lester Carter mad. Lester Carter said he would kill him if he could find him. So Lester Carter hunted all over the swamp and he couldn't find anybody that had said anything to us but "Good morning." Then he went over to a bunch of negro hobos and asked them had they saw us or said anything to us. They said "No." So he cussed one of the negroes out and called him dirty names. That was what he told us when he came back to where we was. After this I got a chance to tell Lester Carter better, that there was no negroes insulted us or anyone else. Then Orville Gilley joined us. Only a few minutes after Orville Gilley joined us, we went down to the freight yards. We sat at the freight yards until the freight train pulled

in going west.] When the train pulled in we caught the train. We got on this train. We got between a box car and an oil tank. We sat down on the end of this oil tank and there were two other men and I neither saw them since nor have I ever saw them before they got on the train at the same time we did and sat down with us. Then we had been going for some time when there was a bunch of hobos coming on the train and they were just walking on the train. When they passed us, they said "Hello" or something like that. They spoke to us and walked on. Then when the train pulled into Stevenson, Alabama, we got off the train. We tried to find an empty box car and failed because there was no empty box car that we could find on the train. When the train started to pull out, we got into a gondola and besides this gondola there was several other gondolas. We was all sitting on this gondola, Victoria Price, Orville Gilley and Lester Carter and myself. Shortly after the train pulled out from Stevenson, Alabama, there was some white boys come to the next car from where we was, a gondola, and they said something and Lester Carter was talking to them. I don't know what was said between them, but I noticed that there was some negroes come into this car from the top of the box car from the direction of the caboose. Then when these negro boys got to where these white boys was, there was a fight. I don't know what the fight was about, but most of these white boys got off the train. Lester Carter also got off the train. Orville Gilley started to get off. I don't know why Orville Gilley or Lester Carter wanted to get off, but Lester Carter got off. Gilley started to get off, but was pulled back in the car by one of the negro boys. After then the negro boys disappeared. I did not see them any more until there was some boys taken off the train at Paint Rock.

21. Did you arrive on a freight train at Paint Rock, Alabama, at or about 3 P. M.? State in detail what transpired at Paint Rock?

A. Yes, there was some negroes taken off the train and placed under arrest and Victoria Price and myself was

also placed under arrest and Orville Gilley was also put under guard by the sheriff. Victoria Price made out like she fainted. She was taken into a store, where I was also taken a few minutes later. When I was taken into the store, there was a doctor with Victoria. The doctor said there was nothing wrong; only that she had just gotten scared and that she had high blood pressure. I knew she was bothered with high blood pressure. When she began to talk, she was asked about what happened. So she told them that we were attacked by some negro boys. There was one man who told her to tell the story and there was another man who told her to shut up until she got to Scottsboro under protection of sheriffs. We was arrested by the sheriff at Paint Rock, Alabama, but those others were higher sheriffs. When we first arrived at Paint Rock, there was a big crowd there.

22. State in detail what transpired on March 25, 1931, on a trip from Paint Rock to Scottsboro, Alabama.

A. There was nothing happened, only that we was taken from Paint Rock to Scottsboro in an automobile with a few men in the car. I think it was about five or six men. I don't know exactly how many. The negro boys was also carried to Scottsboro. I saw them when they left for Scottsboro, and then I saw them again in Scottsboro.

23. State in detail what transpired during a physical examination of yourself and Victoria Price by Drs. Bridges and Lynch.

(The State objected to that part of the answer to this question enclosed in brackets. The Court sustained the objection. Defendant excepted.)

A. Victoria Price was examined first by these two doctors in Scottsboro, Dr. Lynch and Dr. Bridges, and then I was examined by these two doctors. The doctor only asked me if I had ever had any children and I told him "No." [He asked me when was the last time I had sexual intercourse and I said "The evening before."] That's all that was said between the doctors and myself. There again

was an examination. I don't know what they did to Victoria Price. I suppose they gave her the same examination. They just gave us an examination and painted us with mercurechrome. That was all that happened. They didn't examine my whole body that day. They just examined the lower part of my body—my vagina.

24. State what transpired in the Scottsboro jail and conversations had by and between you and Victoria Price and certain white boys confined in Scottsboro jail after March 25, 1931, up until the trial of Haywood Patterson and others.

Mr. Knight: Parts of that answer may be admissible and parts might not be.

Court: Make your objections when they come to it, and I will rule.

(The parts of the answer enclosed in brackets are the parts objected to by the State and sustained by the Court. The defendant excepted to the exclusion of each part of the answer so enclosed in brackets.)

A. After we returned from the doctor's office to the jail, there had been seven white boys arrested at Stevenson, Alabama, and had been transferred to Scottsboro. Lester Carter was also there at Scottsboro jail. [Victoria Price told the high sheriff, who was also the jailer, that one of these boys, who had been arrested and brought to this jail, was her half-brother.] Then she told again that she was attacked and raped by these negro boys. She told that to the sheriff. She said that there was twelve of these boys. There was not very much said about it that afternoon, because it was late and that night Victoria would not rest. I didn't know what was wrong. She was scared and we was both frightened. The next day we was examined again by the doctors and there was a few scratches on our bodies and there was a few bruised places. They were caused by the freight train riding [because anybody will get sore from riding in a freight train and staying in

a hobo jungle. This boy, who Victoria claimed is her half-brother, also told that Victoria was his half-sister and kept making noise and kept trying to break out of the jail, until they put him in the same cell with Victoria Price and myself]. Then my mother appeared at the jail. First she asked the jailer why that man was in there with us two girls and Victoria Price was standing there and she answered [He is my half-brother. The jailer said he wouldn't be quiet until he was moved into the cell with Victoria.] My mother tells the jailer that unless he removes that man from the cell she would see what she can do to him for having the man locked up in jail with two girls, when it was against the law. After the boy was removed, Victoria said to me that I must remember to tell the same story as she was telling me. She was at that time telling me what all she had told the sheriff. She had told the sheriff that we had been raped and she made up the story of how we had been raped, and she was telling me the story. I told her that I do not know whether I will or not, because it is not true. She was telling me that I must tell these things, as she was pointing them out to me. She said we had been raped each of us by six negro boys and that one of the negro boys was holding her feet, another held a gun and a knife at her throat and another had intercourse. She also stated that she had some money on her and that it had been taken off; also a pocket knife, that she had on her when she left home, had been taken off her from her pocket. We had men's clothes on. We had clothes underneath. We had slips and a couple of dresses. As I remember, Victoria Price had a sweater—and we had overalls over the dresses. We also had lots of visitors who came to the jail to see us. They would always ask Victoria Price what had happened and she would tell them that we had been raped by these negro boys. We were then removed on Sunday from the small cell to the large cell. There was also a cage in the middle of both cells where the men prisoners was, but there was more men prisoners in the larger cell. The

seven white boys that were arrested was in this large cell. Victoria Price would have conversations with different one of the boys that was arrested and placed in jail for witnesses against the negro boys. I do not know what the conversations was about, only in one conversation she had with one of the boys, the boy with whom she claimed was her half-brother and with whom she had been making love affairs since she had been in jail, told her that he was going to tell the truth about it at the trial and that he was not going to lie for anybody, her or anyone else. I don't remember what he gave his name, but I remember that Texas was his nickname. I know his name now. Odell Gladwell. I also heard her tell Lester Carter that he must tell that we had been raped by these negro boys. During this whole time that we had been in jail, there had been many negro men brought in by the sheriffs for identification for the other three negroes who had not been arrested, which Victoria Price said there had been twelve. There was only nine arrested at Paint Rock. Lester Carter told her that he knew nothing about it, whether or not we had been raped and that he would not and could not say that we had been raped by these negro boys. Victoria Price reminded me during all this time that I must tell what she did. She said that unless I did tell what she did, I would get her in trouble. She would have to serve a jail sentence. [She was then expecting to be prosecuted by my mother for carrying me across the state line when I was under twenty-one years of age and because my mother knew nothing about my going away from home.] We was also taken out into the hospital apartment of the jail, hospital ward, to identify negro boys. Victoria Price identified a knife which she said was hers; that it had been taken off her body by one of the negro boys. Victoria Price did not have any knife when we left Huntsville, neither did she have any money. There was a lawyer by the name of Stephen Roddy, or Stevenson Roddy. He had the nine negro boys brought into the hospital where he also had us brought into the hospital

where to identify the negro boys. He asked Victoria Price to take out the six boys that raped her. Victoria Price pointed out six of the boys. Then he asked me if the other three was the ones that had raped me. I was at this time frightened very badly, because there had been threats made against my life and I said "Yes." Victoria Price had also told that there was two guns that the negro boys had, I remember as being thirty-two calibre, that's what Victoria Price said. I remember as her saying there was a thirty-eight or forty-five calibre. Victoria Price and Lester Carter had a conversation. Lester Carter asked Victoria Price why she wanted to tell what she did on these boys for. Victoria Price said that she didn't give a darn for all of these niggers, let them hang them all and Lester Carter told her that she should be ashamed of herself. I don't remember whether there was anything else.

25. Did you testify on the said trials as a witness for the prosecution?

A. Yes, sir.

26. Did you testify on the said trials that six negroes raped you and six negroes raped Victoria Price and one of the negroes held a knife at your throat?

A. Yes, sir.

27. Was that testimony true?

A. No, sir.

28. What prompted you to offer such testimony, if false?

(The State objected to this interrogatory. The Court sustained the objection. Defendant excepted.)

The excluded answer was as follows:

A. Because Victoria Price told me these things and because I was threatened and I was scared for my life.

29. Did Haywood Patterson, Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery, Eugene Williams, Roy Wright, Charley Weems and Clarence Norris, or any of them, have intercourse with either of you or Victoria Price on March 25, 1931?

A. No, not any of them, with either of us, Victoria Price or myself.

30. Did Haywood Patterson, Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery, Eugene Williams, Roy Wright, Charley Weems and Clarence Norris, of any of them, assault either you or Victoria Price on March 25, 1931?

A. No.

31. Up to the time you reached Paint Rock did you see Haywood Patterson, Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery, Eugene Williams, Roy Wright, Charley Weems and Clarence Norris, or either of them?

A. Of course I saw some negroes in a fight with the white boys in the next car on the train, but I could not say whether any of these nine was in this fight or not.

ALL OF DIRECT INTERROGATORIES.

Before crossing the interrogatories, the State filed the following objections to the above direct interrogatories:

(Caption.)

Comes the State of Alabama and objects to the interrogatories propounded by the defendants to the witness Ruby Bates, and particularly to interrogatories 11, 12, 13, 14, 15, 16, 17, 18, 19, 23, 24, 28, and each one separately and severally, and to each subdivision of each of said interrogatories separately and severally, because:

1. It calls for immaterial evidence.
2. It calls for illegal evidence.
3. It calls for incompetent evidence.
4. It calls for irrelevant evidence.
5. It calls for the conclusion of the witness.
6. It calls for matters res inter alios acta.
7. It calls for matters not part of the res gestae.

THOMAS E. KNIGHT, JR.,
Attorney General.

THOMAS SEAY LAWSON,
Assistant Attorney General.

The cross-interrogatories, with answers thereto, were as follows:

1. Did you not testify in the trials of the above-named defendants held in Scottsboro, Alabama, in 1931?

A. Yes.

2. Did you not then and there testify that you were forcibly ravished by six colored boys and that Victoria Price was also forcible ravished by six colored boys?

A. Yes.

3. Did you not testify that the above-named defendants were among those who ravished you and Victoria Price?

A. Yes.

4. Did you not make the following statements during the trial of Haywood Patterson, held in Scottsboro, Alabama, on or about April 7th, 1931?

"My name is Ruby Bates. I am seventeen years old. I was with Victoria Price on a freight train in this county running from Chattanooga to Huntsville. I was riding on that freight train between Stevenson and Paint Rock. On that train I saw the defendant over there; I saw him there on the train. When I first saw him the train was just this side of Stevenson, and at that time he was coming over a box car with the rest of the colored boys. I could not tell you just how many colored boys I saw there; I saw more than the defendant; I saw more than one. When I first saw them I was sitting down in the gondola. There was gravel in that car; it was not plumb full. I was in the end of the car next to where the negroes jumped into it. Mrs. Price and I were together. At the time the negroes jumped over into it, there were seven white boys in there with us. After the negroes jumped in there, they told the white boys to 'unload' and hit two of them in the head with pistols, and then all of them got off but one; he stayed on there. All seven of the white boys got off but one. They had a fight with those negroes; they fought back with them.

I saw two negroes with pistols, this defendant was one of them. I saw him with a pistol; he was one that had a pistol, and another one had a pistol and the rest had knives, and these knives were open. I know what happened after those white boys got off the train. They threw us down in the gondola and they all ravished me. I saw some of them ravish Victoria Price. I saw the defendant. I saw him when he was having intercourse with her. When he had his hands on her, I saw other colored men around her. One of them had a knife holding it on her throat and the other was holding her legs, and that is when I saw this defendant over there (indicating), the one sitting next to Mr. Roddy (of counsel for defendant) on Victoria Price.

I got off the train at Paint Rock. These colored men were on the train when we reached Paint Rock or stopped there. When the train stopped there, the colored men ran toward the engine and the people down there surrounded the train and got them off. I got off the gondola without anybody helping me off. When I got off the car, Victoria Price was unconscious at that time; she got nearly off the car and fell off and I picked her up and laid her on some grass and stayed there with her about ten minutes before the people brought a chair down there and put her in it and carried her to a store. Mrs. Price and I did not go anywhere until they brought us up here. Some doctors made an examination of Mrs. Price after she got to Scottsboro. Going into Chattanooga the day before, I saw some white boys on the train. These were white boys on the train. I did not talk with them; never said a word to them."

A. I did not make the statement, but I was asked these questions. One of the attorneys for the prosecution asked this kind of questions and the answer that I gave them was yes, but I did not make this statement myself.

5. Did you not make the following statements during the trial of Clarence Norris and Charlie Weems held in Scottsboro, Alabama, on or about April 6, 1931:

"My name is Ruby Bates. I live at Huntsville. Along about March 25th of this year I was in company with Victoria Price on a freight train traveling from towards Chattanooga to Paint Rock, Alabama. After the train left Stevenson, I saw those negroes, those defendants sitting over there by the side of defendant's counsel, on the train." That you saw Weems and Norris on the train.

"I say I saw them. When I first saw them they come over the top of the box car. When I saw them coming over the top of the box car they had guns and they told the white boys to unload. Then one of them hit one of the white boys in the head with a pistol. That one on the left-hand side was the one that hit the white boy on the head with the pistol. Then some of the white boys began to get off the gondola, and all of the white boys got off but one. After the white boys got off, the colored boys throwed us down in the car. The one on the left side had a gun. I first saw the white boys after we got on the oil tank. They were not the same white boys that rode from Huntsville over to Chattanooga. I had never seen these white boys before. The colored boys had a knife during the fight between the white boys and the negroes. I could not tell how many knives the colored boys had. There were three negroes to each girl, one for intercourse and one for holding the knife and one for holding the pistol. While six men had intercourse with me they stood there with a knife and pistol on me." That you had never known or seen Lester Carter or any of the other white boys before?

A. I did not make such statements, but this was also asked by the attorneys and I said, "Yes." I was asked

at the first trial that I saw Weems and Norris, and I remember saying "Yes" to the attorney, but I did not see them, that I remember anything about. I cannot say whether these were the ones that were in the fight—the only colored boys I saw were in the fight. I don't think I answered such a question as to whether I had ever known or seen Lester Carter or any of the other white boys before, because I had saw Lester Carter before the Scottsboro case happened—before March 25th. The statement above was told by Victoria Price many times in jail and she reminded me just before going to trial that I must remember everything that she had told me to tell.

Mr. Knight: I move to exclude the last statement as not responsive.

Sustained. Exception by defendant.

6. Did you not make the following statements during the trial of Ozie Powell, Willie Roberson, Andry Wright and Olin Montgomery, held in Scottsboro, Alabama, on or about April 8th, 1931?

"My name is Ruby Bates. I live at Huntsville. I am seventeen years old. On or about March 25th of this year I was on a freight train running between Stevenson and Paint Rock in Jackson County, Alabama. Victoria Price was with me. There was no one else with me. I saw those five negroes on the front row, these five defendants, in that car after the train left Stevenson, Alabama. When these defendants came over the box car they told the white boys to unload. And then they attacked us girls after they got the white boys off the train. The colored boys ravished me. Every one of the colored boys I saw that day had intercourse with me or with Victoria Price."

A. No, I did not make this statement, but I was asked the questions and I said, "Yes."

7. When did you leave Huntsville for Montgomery?

A. On February 28, 1933.

8. Whom did you leave with?

A. A girl friend of mine and two boys. The girl's name was Rosetta Brown and my boy friend's name was Jackson, and the other boy, I didn't know his name.

9. How long had you known each of them, if more than one accompanied you?

A. I can't say exactly how long I knew them, but I knew them for some time. My boy friend, I knew him for a couple of years. I wasn't really friends with him, but I had known him for a couple of years. The girl friend I had known for some time. I don't remember how long I had known the girl. The other boy, I had only met him that day.

10. How long did you stay in Montgomery?

A. Just long enough to have something to eat.

11. When did you leave Montgomery and who accompanied you, and where did you go?

A. It was probably an hour after I arrived there on the night of February 28, 1933. Only my girl friend accompanied me. We went to Gadsden.

12. If one of the parties with whom you left Huntsville was a Mr. Jackson, state the conversation you had with him.

Mr. Leibowitz: We object to that, Judge.

Court: It appears that interrogatory No. 12 is a preliminary question to the 13th interrogatory. I'll let him read the answer.

Mr. Leibowitz: Exception.

A. I don't know what conversation you mean, because I had many conversations with him. The conversations I remember was about work. I was unemployed at that time. That's all that I can remember now.

13. Did you know then or do you know now that Mr. Jackson was or is an employee or associate of defendant's counsel?

(Defendant objected to the question because it assumed that the party was an employee or asso-

ciate of defendant's counsel. The court overruled the objection, and the defendant excepted.)

Court: Of course, the question does not purport to prove that he was or not in the employment of defendant's counsel, and I'm letting that in.

A. I did not then and I do not know now, because I haven't seen him since I left Montgomery.

14. Did Mr. Jackson give you $20 while you were in Montgomery?

A. He did.

15. Who paid for your board and upkeep during the time you were in New York prior to your appearance in Decatur in April, 1933?

(Defendant objected to question. Court overruled objection. Defendant excepted.)

A. I worked for my board. I paid for it myself.

16. Who paid for your transportation from New York to Decatur, Alabama, in April, 1933?

(Defendant objected to the question. Court overruled the objection and defendant excepted.)

A. I borrowed money from the woman I was working for.

17. Where did you get the coat and hat which you wore when you testified in the trial of Haywood Patterson in April, 1933, in Decatur, Alabama?

A. I bought it at Klein's for $3.98.

18. Did Dr. Harry Fosdick of New York give you a coat and a hat, or either of them, or did he give you the money with which you bought them or either of them?

Court: I don't think that's got anything to do with this case; that's ruled out.

19. Did you know Miss May Jones?

A. I met her in Birmingham at Rev. Clingam's studies in Birmingham the day that I arrived in Decatur.

20. Where did you meet her?

A. In the studies of Dr. Clingam in Birmingham.

21. Did you make a statement to her to the effect that you came back here to testify in April because you were as much to blame as the colored boys?

(Defendant objected to question. Sustained.)

22. Have you corresponded with your mother since you have been in New York?

(Defendant objected to question. Sustained.)

23. Have you corresponded with your father since you have been in New York?

(Defendant objected to question. Sustained.)

24. Do you know Danny Dundy?

A. I don't know whether I can personally identify him or not.

25. While you were in Huntsville did a man come to see you on January 5, 1932, and get you drunk and have you write a letter to a friend of yours by the name of Earl stating that the Scottsboro defendants were not guilty?

A. I had c- npany that day, but I was not drunk. I also wrote a letter that day, but there was no one dictated that letter to me. This man did not have me write the letter. I wrote it myself.

26. Did you not sign an affidavit before a notary public of the County of Madison, wherein you stated that when you wrote that letter mentioned in question 25 that you were drunk and did not know what you were writing and that your testimony given in Scottsboro was the truth, which affidavit was made on January 6, 1932?

A. I signed that affidavit, but I didn't read this affidavit before I signed it. I signed the affidavit because I was terrorized by the Chief of Police of Madison County.

(This was all of the cross interrogatories read to the jury.)

REBUTTING INTERROGATORIES.

1. What did you say to Miss Mary Jones, if anything?

A. If it is May Jones, I only told her that the boys were innocent.

2. State the circumstances under which you signed the affidavit referred to in cross interrogatories at question 26, in which you made certain statements concerning a letter you had written to one Earl.

A. I was terrorized by the Chief of Police of Madison County. That is why I signed this affidavit and I did not read the affidavit before I signed it.

Mr. Leibowitz: Your Honor sustained an objection to one of the interrogatories, No. 28, which asks: "What prompted you to offer such testimony, if false?" I submit that that becomes material in view of the fact that she said in the Scottsboro case that she had been raped, and this explains why her testimony was given that way.

Court: Here's the trouble with your question: in Alabama the law is quite different from what it is in a number of the other States. At one time it was the only State in the Union that you couldn't ask your own witness why, or the purpose for which he did anything, and I am but following the law on the subject.

Mr. Leibowitz: We reserve an exception.

Court: I can see why you feel that it should be allowed, because most of the States permit such questions. This State doesn't, and I am bound by the decisions of the Supreme Court of Alabama, unless it involves the Fourteenth Amendment.

Mr. Leibowitz: In other words, the girl can't show why she made that statement?

Court: No, sir.

Mr. Leibowitz: May these interrogatories be marked as part of the record.

Court: The way I suggest you do that is that they show that they are filed in court, because that gives them an official standing in the court.

Mr. Leibowitz: We offer in evidence the interrogatories, questions and answers as shown in this binder, this brick colored binder, containing several different covers.

LESTER CARTER, sworn for the defendant, testified:

Direct Examination:

I know a woman named Victoria Price. I know a woman named Ruby Bates. I met Victoria Price for the first time in the jail in Huntsville in 1931, some sixty days before I got on this hobo trip with her. Before I got on this train on the 24th of March, 1931, I knew Victoria Price some forty to fifty days. I know a man named Jack Tiller. I first met him in the jail at Huntsville, Alabama. That was when I met Victoria Price. After the three of us got out of jail, I met Victoria Price in Huntsville, Alabama. I first met Ruby Bates during the time I was serving some forty or fifty days out on the chain gang in Huntsville, Alabama. Victoria Price and Jack Tiller introduced me to Ruby Bates. That was while I was still in jail. After I got out of jail, I saw Ruby Bates in Huntsville.

The following then occurred:

Q. Did you not, on the night before you left Huntsville, together with Ruby Bates and Victoria Price and Jack Tiller, go to a lumber yard in train yards there, and did you not have intercourse with Ruby Bates there that night, and did not Victoria Price have intercourse, in your presence with Jack Tiller?

Mr. Knight: We object to that.

Court: I sustain the objection. That question is not legal and highly improper, and you will pay no attention to it.

Mr. Leibowitz: Exception.

On the following day I left Huntsville with Ruby Bates and Victoria Price. I left from the railroad yards, near the negro cemetery in Huntsville, on the Southern Railroad.

The following then occurred:

Q. Who was there when you and Victoria Price and Ruby Bates got on the train?

Mr. Knight: We object to that.

Court: Sustain the objection.

Mr. Leibowitz: Exception.

I rode with Victoria Price and Ruby Bates in a car from Huntsville to Chattanooga. When I got to Chattanooga, Tennessee, I left the train, together with Ruby Bates and Victoria Price. We met Orville Gilley in the railroad yards there, we did not know him before.

The following then occurred:

Q. Did you and Orville Gilley and Ruby Bates spend the night together? A. Yes, sir.

Mr. Knight: We object to that.

Court: I sustain the objection. (To witness) You were on the stand the other day and I explained to you that when an objection was made that you were not to answer until the court first had a chance to pass on it. Now, keep that in mind. Gentlemen of the jury, that question is illegal and highly improper, and the answer that was made to it was illegal and improper. I exclude that from you, and you must not pay any attention to that in the case,

and when evidence is ruled out, why, it is out, and you have no right to consider either the question or the answer.

Mr. Leibowitz: We reserve an exception.

Q. Were you in Victoria Price's company continuously from the time you got off the train in Chattanooga until the next day when you boarded the train?

Mr. Knight: We object to that.
Court: I sustain the objection.
Mr. Leibowitz: Exception.

The following day, we four, including Victoria Price, Orville Gilley and myself, got on the train to come from Chattanooga to Huntsville, we four were traveling together. After we got on that train some trouble come up between the white boys and the negro boys about stepping on a negro boy's hands. When we got to Stevenson, Alabama, we changed and got in another car, Ruby Bates, Victoria Price, Orville Gilley and I. We left the train somewhere back here (indicating on miniature train) while the train stopped and come up the train, and we four got into this one (indicating), one of the middle gondola cars, the fifth from the caboose and the fourth car from towards the engine, in the string of gondolas; I couldn't say that it was the fourth car from the end, but it was one of the two middle cars. We stayed in that gondola car for some miles out of Stevenson. We did not, at any time on the train, invite other company to join the two girls, Gilley and me.

The following then occurred:

Q. What was the reason for getting into the gondola car alone with the girls, and not with the other hoboes on the train?

Mr. Knight: We object to that.
Court: Sustain the objection.
Mr. Leibowitz: We except.

We were lying down on our elbows, us three, Orville Gilley, Ruby Bates and myself. There was no other white boy in that gondola car where the women rode, except Gilley and I while I was on the train. From the time we got in that car at Stevenson up until the time we left the train the girls never left the car for one minute; Ruby Bates and Victoria Price were in the company of Gilley and myself all that time. Some men started towards the caboose, down toward the colored boys. Some colored boys got into that car, further back on the train, they were fighting. They never came into the car we was riding on after the fight. Eventually, the fight between the white boys and colored boys come up to the joining car, that is where the fight took place. Gilley and I got up and went toward the car where the fighting was taking place. I did not see Gilley go over into the fight; I did not get into it. When I got up, the girls were sitting where I got up on the front part of the car. I got off on this stirrup and climbed over in between these two cars (indicating), intending to get in the fight, but decided I would leave and I got off the train. Some negro struck at me while I was on the end of the gondola, someone struck at Gilley. I left the women sitting in this car when I got off (indicating). Victoria Price did not at any time sit in the car (indicating) nearest the caboose, right next to the box car, in this end. No negroes jumped over the heads of the two girls in the gondola car while I was there. There wasn't any women in that gondola car nearest the caboose. Victoria Price had a snuff box when she got on the train at Chattanooga; I saw her use snuff the night before and the day before, out of this snuff box. I don't remember her having a knife with her at all on that train; she asked me if I had a knife to open a milk can. Between the time we got to Chattanooga and the time we got back on the train Victoria Price asked me for the use of a knife, so that she could open up a milk can. We went back to Stevenson, and then from Stevenson we were carried over to Scottsboro, several other boys and I. When I got to

Scottsboro I saw Victoria Price there in an automobile. She motioned for me to come over, but I didn't go. Odell Gladwell, one of the boys taken from Stevenson to Scottsboro with me, he went over and I heard Mrs. Price ask him would he pass as her brother, if he didn't, they would be arrested for hoboing or vagrancy, and he said he would pass as her brother. He was not her brother that I know of. Victoria Price and I had many talks, not about the guilt or innocence of these defendants, nor about whether the charge was true or untrue. She asked me would I swear what she was going to swear, and I told her I would swear what I know about it, that I would tell the truth. I was in jail all during these four Scottsboro trials; I was never called as a witness by the State. They let me go after they had me in jail between sixteen and twenty days. I do not know what Gilley's occupation was. I later met him in California; I talked to him there about the guilt or innocence of these defendants.

The following then occurred:

Q. Did Gilley tell you in the State of California, in talking about this case, that there was no raping on that train, but that Victoria made up the story to keep herself from being prosecuted for violating the Mann Act in crossing the State line?

Court: I don't remember any such question as that being asked Gilley in this case.

Mr. Leibowitz: May Gilley be recalled so that I may ask him this question.

(Carter retired and Gilley came back to the stand.)

ORVILLE GILLEY, recalled for further cross-examination.

Re-cross Examination:

I met Carter in California and had a talk with him. I did not tell him there, after the Scottsboro trials were over, that there was no raping, that I saw no raping, that Victoria Price was trying to get me to say there was raping so that Carter and she and I would not be prosecuted for taking women across the State line for immoral purposes.

(Gilley retired. Carter brought back.)

Direct Examination Continued:

Gilley told me in California he didn't see any raping on the train. He didn't tell me what Victoria Price told him with reference to saying there was no raping, and why he should say there was no raping. He did tell me that he saw no raping.

Cross Examination:

My name is Lester Carter. I came from New York and testified in the case of the State against Haywood Patterson, in April of this year. I didn't remember the day I got here from New York in April. Ruby Bates and I did not arrive together. I bought the clothes I got here myself; Mr. Brodsky gave me $4 during the six weeks I was in New York. I came in an automobile from New York to Birmingham on my way to Decatur last April with two New York boys associated with the defense. I don't remember whether Ruby Bates and I came into this court room the same day last April. I know she testified the same day. I don't know whether she came in the court room the day before or not.

The following then occurred:

Q. You testified that you were in the Scottsboro jail all the time during these former trials. I will ask you if you told Mr. H. G. Bailey, the Circuit Court Solicitor of Jackson County, at that time, that these girls were not in the gondola car where the fight occurred.

Mr. Leibowitz: We object to that.
Court: Overruled.
Mr. Leibowitz: Exception.

A. Repeat over that question.

Q. You testified on direct examination that you were, throughout the trial of these cases at Scottsboro, in jail there?

Mr. Leibowitz: That is objected to.
Court: Overruled.
Mr. Leibowitz: Exception.

I testified that throughout the trials in Scottsboro I was in jail there and was not called as a witness. I don't remember whether I told that these girls were not in the gondola in which the fight took place. If I had been asked if there was a fight in the gondola car, I would have said yes. I did not see Gilley in the car in which the fight was going on. I know that he got out of the car, down in between the two cars. I don't know whether he got into the car in which the fight was going on. He was climbing over the side of the train there along about the same time I jumped off. I saw Gilley hit or hit at at that time. I was getting off the car I was in to get into the fight. I testified last week in the Patterson case that I climbed over on that car, on the other car, for the purpose of getting into the fight, until I thought later I would get off and get out of the fight when this negro struck at me. I said that prior to the fight, Victoria Price, Ruby Bates, Orville Gilley and I were in a car; all got in together and were together. We were in the end opposite to the way

we was going at one time; not exactly in the end, but closer to that end than the other. We first got in the front end, and then we moved back. We were in the car three or four minutes when we moved from the front end to the back end. We got in the front end before leaving Stevenson, then later moved to the back end of the car. It is not a fact that Victoria Price and Ruby Bates were in one end of the car and we in the other; we all moved to the other end and were all together. I testified before in Decatur that Orville Gilley and I walked about in the car. I don't remember being asked in Decatur the last time and answering that they got in the front end and that Gilley and I remained in the back end. I remember answering yes, we was in the same car and in a sense we was together; we was in talking distance. I was playing a mouth organ, a harmonica; Gilley was singing. When the girls got in the car we all lay down, lying on our elbows, so as to be as comfortable as possible. I think that Gilley and I were lying somewhere near the middle of the car, and the girls down at the rear end of the car; I wouldn't say. I can't recollect now, but somewhere near that end of the car. The car was loaded with some kind of small stone, ground up, filled to around 2 or 3 feet of the top. I could not at the time stand where I was in the car and see the negroes in the next gondola car. This car joining our car was loaded with coal, I believe; I wouldn't try to estimate how high up it was loaded, but it was a loaded car. Some white boys and negro boys came in there later fighting. I noticed some white boys and some negro boys in the car. I don't know how many white boys. They were not in that car when we left Stevenson. I saw them come into that car fighting. I think the white boys came in first. We heard them hollering and got up and seen there was a fight. None of the colored boys said anything to us.

The following then occurred:

Q. Did you see them come into the gondola where the girls were? A. No, sir.

Q. You don't know whether they did or didn't?

Mr. Leibowitz: We object to that because he can only testify as to what he saw.

Court: Overruled.

Mr. Leibowitz: Exception.

When I went toward the fight, in my judgment the girls was somewhere along the end there (indicating); I climbed up this side so that I could get off this car and get into the fight. I don't remember a partition in the gondola; it was more this type, I remember it was practically full, up to 2 or 3 feet of the top. The girls were in one end and moved over to the other end, maybe five or ten minutes before I crawled over to get into the fight. We were down there playing our harps. No one was in the joining car then. When we heard that hollering, they called to us and said, "You boys said you was going to help" and Gilley and I started to climb out. I did not look back into this car. Gilley was there when I got up. I don't know where he went after that. He started out of the same car that I was leaving. I did not see any negro put his hands on Gilley.

I saw Gilley in California. He asked me to eat with him. I refused to do that. I took a cup of coffee, and then we got a room at the Nix Hotel on Market Street, on a side street. I said I would go out and see if I could make a pick up of money, and would come back later. I didn't go back, and next morning I left out. I don't know that there were white boys thrown off the train; I know that some got off. I got off, I got off the train without getting into the fight. A negro struck at me and I got off. He struck at me with his fist.

The following then occurred:

A. I don't know what negro it was.

Q. Did you ever see that defendant before to-day? A. Not that I remember of.

Q. Did you see him at Scottsboro? A. Not that I remember of.

Q. Did you see all the boys that were taken off the train?

Mr. Leibowitz: We object to that.
Court: Overruled.
Mr. Leibowitz: Exception:

A. No, sir, I didn't see all the others.

I don't know whether they were on the same floor or different floors of the jail. I know how many white was where I was. I do not know of any colored boys on my floor. I did not testify before the grand jury at Scottsboro, I didn't testify before anybody. I saw Gilley get up on the side of the car like he was going in the other car; I thought he was going to do what I would do. I went back to Stevenson and talked to a deputy. I was taken by automobile to Scottsboro. I do not know of anybody getting any water to wash up when they got to Stevenson. I saw some blood on some of the boys. I do not know if they washed it off. I do not recall seeing Mr. Woodall at Stevenson.

Re-direct Examination:

Nobody, no solicitor, ever asked me to testify before the grand jury or in the Scottsboro trials. I was taken from the witness room in Scottsboro to a drug store.

Q. Did you tell anybody what you knew of the case in Scottsboro, anybody? A. Yes, sir, I talked to some fellows there, several different fellows.

Q. Did you tell them what you are telling here to-day, what you knew about this case?

Mr. Knight: We object to that.
Court: I sustain the objection.
Mr. Leibowitz: We except.

The crushed rock or stone was very small, is the way I would estimate it. I don't know how large they were. I do not remember seeing stone put between railroad ties. I have not been riding freights many years.

The following then occurred:

Q. If you rested your forearm on that stone, just your forearm without any cover, was the stone large enough and sharp enough to cut the skin?

Mr. Knight: We object to that.
Court: Sustain the objection.

It was rough stone. It was mostly shells broken up; shells from the river, or something like that; just small chips of stones.

DEFENDANT RESTED.

LUTHER MORRIS, sworn on behalf of the State, testified:

Direct Examination:

I am Luther Morris. I reside between Stevenson and Paint Rock, a mile and a half from Stevenson. On March 25, 1931, a freight train passed by my house. I was up in my barn loft that day. Looking from Stevenson towards Paint Rock I was in the west end of my loft, towards Paint Rock. When the train passed by I looked at it. There were gondola cars on that train, cars sorter like the cars look on this train (indicating miniature train). I saw something on those cars. I saw something what looked to me like about seven or eight negroes, and

there was six white boys, for sure, and I seen three of them that was thrown off, and two white ladies. As near as I can tell the girls were in the car, all fightin' and scuffling. I heard a noise as they come on and I saw them in the car fightin' and scufflin'. I saw one of the girls in a position right at the top of one of these cars. Then I saw them put three of the white boys off.

The following then occurred:

A. (Continued) I seen something going on very serious.
Q. Did you see anybody touch these girls?

Mr. Leibowitz: We object to that.
Court: Overruled.
Mr. Leibowitz: Exception.

A. Yes, sir.
Q. Did you see anybody put their hands on either of the girls?

Mr. Leibowitz: We object to that.
Court: Overrule the objection.
Mr. Leibowitz: Exception.

That was between 12 and 1 o'clock. When I saw somebody put hands on these girls I quit watching. Then I seen them throw off two or three white boys from the time the train got even with my barn down to the lower end of the switch, maybe two or three hundred yards from me. I did not see anything done to the girls at that time, only the negroes had hold of the girls. For something like half a mile I saw that train, I could see it from where I was.

Cross Examination:

I wear glasses because my eyes are bad. I have been wearing glasses about two years. I don't remember how many months after this happened I started wearing glasses. I don't remember when I bought them. My eyes had been

getting bad for some time. My eyes had not been getting bad for two years. I got the glasses because my eyes were bad. Some time prior to that time I had been feeling that I needed glasses. I didn't pay any attention as to how long before I got the glasses, that I felt the need of them. I was filing saws. Because of my duties my eyes had not been gradually getting bad a few years before I got the glasses. My eyes got so I couldn't read fine print and I got them on that account. There is nothing the matter with my hearing.

This train, when it passes my place, makes a lot of noise, clanking along the tracks, the wheels clanking against the rails. The couplings between the cars and the cars themselves make quite a noise. The engine makes a noise as it puffs along there. No whistle blows along there. The train is 50 feet from the right of way fence. They were crying when I heard them. I heard them crying out. I saw a bunch of negroes on that car all scuffling around. The car was pretty well crowded. They were all crowded around in the gondola, all over it. I think that train was going thirty-five to forty miles an hour at that time. That's pretty fast moving for a freight train. I got a glimpse of the car as it came by my barn. Of course, as the train proceeded further, the further that car went down the line, with the condition my eyes were in, the more indistinct these figures got. I watched them put another white boy off. They put off three even with my house. I saw three white boys get off. I did not see the white boys before the train came in view. I seen three put off. Three were put off on the right-hand side coming this way. When they were put off, the negroes were scuffling around in the car. It took a very few minutes to put these men off. I don't guess it was two minutes. They put two off, you see. I don't know that a train going thirty to forty miles an hour would cover a mile in about two minutes. I don't know if it took two or three minutes to put the white boys off; that the train would cover about a mile and a half before the last boy was put off. I do not know where Lee Adams was working that day. If you

told me that Lee Adams was working a mile and a half down the road, and he saw one of these put off, I would not be inclined to change my testimony as to what I saw. All of these whites and blacks were dressed in dirty clothes; all dirty looking. They looked like hoboes riding a freight train. The girls had on overalls. I'm sure of that; looked like overalls. I saw the overalls. They had nothing on top of the overalls. I don't remember seeing that either had on a woman's coat. It has been so long ago.

Re-direct Examination:

I don't think I saw any coat on these women. Looked to me like they had on overalls. I know the difference between a pair of overalls and a woman's coat. I couldn't make a mistake about that.

Re-cross Examination:

After I saw what I claim I saw, I left my loft and went downstairs. I did not then go to any telephone and communicate with the law that two women were being attacked. I just stayed at home and said nothing.

W. A. SULLIVAN, sworn for the defendant, testified:

Direct Examination:

I live in Decatur, Alabama, on Seventh Avenue, East, and have been a resident of Decatur about seventeen years. My business is that of a general photographer. I went at your request with Mr. Schwarzbart to a place near Stevenson, Alabama, belonging to the witness who just preceded me on the stand, Mr. Luther Morris. Mrs. Morris gave me permission to go up and make some pictures in the barn there. The picture you show me is a correct view that I got out of Mr. Morris' loft looking towards Paint

Rock, more to the north than toward Paint Rock. My camera lens was from that window about 18 inches. I got it up as close as I could in order to show that crosspiece. There is a 2 x 4 across that opening there. That is shown on the picture by the black strip. The lens was set to catch that 2 x 4 which was about this high (indicating). The lens was practically on a level with my chin, I would say. A gondola car is the kind of car shown on the picture. I can't answer whether the gondola on the picture is lower than the one in green on this little miniature train. It was a type of car like these little red ones here. When I looked out of that window the level of the window was lower than the top of that car. I could not see any part of the inside of that car as I looked out of that window. The view that I got out of that window was the nearest view I could get along that railroad. That was the nearest point of vision when inside of the barn. Of course, as a train goes towards Paint Rock, it gets out of sight the further away it gets from the point of vision. This other picture you show me which I took shows what I could see through my camera, looking down the railroad at the same point, to see all I could see. In this picture the lens was 5 or 6 inches higher than it was on the other picture. It eliminates the crosspiece and takes in more territory. This picture shows a view of that track further down the line with the camera sitting on the floor. This picture, Defendant's Exhibit No. 7, is a picture looking towards Paint Rock. This picture was looking west, showing the barn and the car standing on the track. It shows the relative height of the two. It is a true picture as nearly as it can be made. (This was picture No. 8.) This picture shows the difference in height between the top of the barn and the railroad, which is the higher. The closer view you show me of the gondola and barn is a correct picture. The top of the barn is lower than the gondola on that side track. I don't remember about how high that hay loft is over your head when you are standing along in here (indicating). There was some distance between your head and the loft. It was lower than the

gondola. I don't know how high the gondolas are on the track. I don't know how high the embankment is that is shown on the picture.

Cross Examination:

I don't know what type of gondola was on the railroad track in March, March 25, 1931.

The following then occurred:

Q. You wouldn't attempt to say that the cars there are the same kind of cars?

Mr. Leibowitz: We object to that.

Court: Overruled.

Mr. Leibowitz: Exception.

A. No, sir.

The picture that you show me, that shows only a portion of the track, that shows one gondola complete, and the part of another gondola, that was taken from the west end of the barn. The barn sets east and west and the railroad runs west. It was taken across the track, rather than down the track, looking a little northwest. This is one taken down the track. If you were watching the train down the track, that is the view you would get.

Re-direct Examination:

That first picture shows the nearest and closest view you could get, taken through that window. After I took that picture I turned my camera to see what I could see down the track.

ELIAS M. SCHWARZBART, sworn for the defendant, testified:

Direct Examination:

I am an attorney assisting the defense in this case. At your request I went with Mr. Sullivan, the photographer of Decatur, to Mr. Luther Morris' place and made some pictures out there. That was about the time of the trial before Judge Horton. We got up in that hay loft to see what we could see, looking towards Paint Rock. It so happened that on that day these cars were standing on the siding. I didn't ask that they be put there, they were there already. They were cars more or less similar to these (indicating), they had straight sides. The cars were of a type definitely higher than those on that section of the miniature. I would say the side of the gondola would be about 2 feet lower than the roof of a box car. They were higher than these. When you look out of the opening the level of your eyes is quite definitely lower than the gondola I saw on that track. The peak of the barn is definitely lower than the top of the gondola car.

DEFENDANT RESTS.

W. E. BRANNUM, recalled by the State, in rebuttal, testified:

Re-direct Examination:

My name is W. E. Brannum. I live at Paint Rock. Today, in company with Mr. W. H. Hill, at the request of Mr. Knight, I made certain measurements in regard to distances, between the station and the coal chute, and between the station and the water tank, at Paint Rock. I testified here the other day. At that time I had made no measurements. The statements I made to the jury, were just my best recollection.

Mr. Leibowitz: We object to this testimony, because it is not in rebuttal, but new matter.

Court: Overruled.

Mr. Leibowitz: Exception.

Mr. Hill and I measured the distances between these places, with the use of a steel tape, placed it along the rails of the track. Then, in my presence, Mr. Hill wrote down on a piece of paper the distances shown between these points. There has been a new station or depot built at Paint Rock since this happened in March, 1931. The distance between the coal chute and the old depot is 804 feet. The distance between the old depot and water tank is 301 feet. The distance between the maintenance house and the coal chute is 680 feet. I testified that when I saw Mrs. Price step off the train and fall to the ground, I was standing between the water tank and the maintenance house, somewheres right along in there, not far from the water tank. I can't say exactly how far it was.

Re-cross Examination:

I would think it was something less than 100 feet that telephone poles were put apart along the road. They never moved that coal chute nor the water tank. The distance between the water tank and the coal chute—it is 301 feet from the depot to the water tank. The place where the engine stopped on that track at the coal chute, the water tank would not be on the other side of the track 301 feet from the coal chute. The distance between the coal chute and the water tank is 301 feet. I did not make those figures, Mr. Hill made them in my presence.

Re direct Examination:

When we measured it was 804 feet from the old depot to the coal chute. From the old depot to the water tank it was 301 feet.

Re-cross Examination.

The maintenance house has not been changed, nor the water tank. When I came around in between these cars I spoke of, I saw these girls in what I took to be calico dresses.

(The foregoing was the evidence and all the evidence taken at the trial of this cause.)

WHEREUPON, after argument, the Court charged the jury as follows:

Gentlemen of the Jury:

In March, 1931, the grand jury of Jackson County returned into the Circuit Court of that county, an indictment, the substantial parts of which read as follows: "The grand jury of said county charge that before the finding of this indictment, Haywood Patterson, Eugene Williams, Charley Weems, alias Charles Weems, Roy Wright, alias Ray Wright, Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery and Clarence Norris, alias Clarence Morris, whose names to the grand jury are otherwise unknown than as stated, forcibly ravished Victoria Price, a woman, against the peace and dignity of the State of Alabama." By due process of law that charge has been transferred to the Circuit Court of this county, and it is to be dealt with here just as if it had been found in this county. You will notice that it charges this defendant, along with other parties therein named, with this offense. Now, that was legal and proper, but only one is on trial here, and that is Clarence Norris, so what has happened, or what may happen to the others is no concern of yours, and you give that no consideration in examining the testimony and in arriving at a verdict in this case. This not a suit by Victoria Price against Clarence Norris. On the contrary, it is the case of the State of Alabama

against Clarence Norris. The State of Alabama, through its grand jury in Jackson County, charges that this defendant, before the finding of this indictment, did rape—Victoria Price—so Victoria Price is a witness in this case, and not a party thereto. You notice it just says, "did ravish Victoria Price." The crime here charged is what is known in law as rape. Rape is defined as being the carnal knowledge of a woman forcibly and against her will. The offense is complete when the woman is made to yield through fear, and does not voluntarily or consciously consent. If the man—the defendant here—intentionally and for the purpose of accomplishing his unlawful purpose, put her in fear of injury or violence to her person, and she yields on account of these things, he is guilty of rape. When a female is not an imbecile or is not rendered unconscious or bodily weak by the administration of drugs or other substances, force is an essential element of the offense of rape. Now, force is either actual force or constructive force. Actual force may be the direct application of force upon the person of the party assaulted. That is actual force. It may be constructive force. That has to do with the mind of the party assaulted. If her acquiescence is obtained through duress of mind, or by putting her in fear, that would be constructive force. If the act was committed by force, actual or implied—that is constructive force—and against the consent of the woman it is rape without regard to whether the defendant put the prosecutrix in fear of her life or fear of great bodily harm in his accomplishment of his unlawful purpose. The question is, did he, by his unlawful acts, put the party in fear, and did she submit by reason of such fear? Consent or acquiescence obtained by duress or fear of personal violence, will constitute no defense; the law regards such submission as no consent at all. If the woman is overpowered by the display of physical force, through force expressly made or implied, and because of her surroundings, and she ceased resistance through fear of great bodily harm, the consummation of the act, the unlawful inter-

course by the man, constitutes rape. The offense is complete when the woman is made, or caused to yield through fear, and does not consent voluntarily, whether the apprehension of bodily harm is reasonable or unreasonable. While the law arms a woman who is assaulted by a man with intent to ravish her with the legal right to stand her ground, and if necessary, kill her assailant to protect her person from the gratification of his lust, the law does not compel her to do so. The question is, did she submit voluntarily, or was it through fear, as I have tried to explain that to you? All the circumstances surrounding the commission of the alleged crime are to be considered by you, and whether the prosecutrix does or does not repel force by force, or resist her assailant to the utmost. If the act of penetration is accomplished by force, either actual or constructive, as I have defined it to you, that is with force, and against the will of the prosecutrix in this case, Victoria Price, the defendant is guilty of rape. In considering the question of force, whether it was sufficient to put the woman in fear of personal violence, of course it is proper for you to consider where it was, her surroundings, her ability to extricate herself from the impending danger, the size of the woman, the size of the man, and if he is aided and abetted by others as I will undertake to define to you later. The number confronting her on the occasion is also to be taken into consideration as to whether or not she resisted. Now, gentlemen, the act, of course, must be done without her consent. Of course, there can be no rape if the female charged to have been raped consented to it. That is one of the elements of the offense. In this case, though, gentlemen of the jury, there is no claim, as I understand it, on the part of the defense that the intercourse was consummated by the consent of the prosecuting witness, Victoria Price, but on the contrary, his defense is that he had nothing to do with the whole matter with reference to the rape, or alleged rape, and had no intercourse with her whatever. The rule is that in prosecutions for rape, evidence of prior unchastity, as a substantive defense, is inadmissible for any purpose, denying the

rape. Where, however, the defense rests on the fact of consent, the character of the prosecutrix for prior unchastity is competent evidence as bearing on the probability of her consent to the act with which the defendant is charged and the likelihood of her not resisting the advances of any man, on the ground that it is more probable that an unchaste woman would consent to such intercourse than one of strict virtue. As I said, there is no claim of consent here, and where there is no claim of consent, then, gentlemen of the jury, the question of her chastity or unchastity is a wholly immaterial issue in the case—or whether or not she has been engaged in similar conduct, or one from which it can be inferred, is wholly out of place and wholly inadmissible. Gentlemen of the jury, that is the law in Alabama, and it seems to be the law in Connecticut, in Massachusetts, in Michigan, in New Hampshire, in Ohio, in Vermont, and in New York, with a number of other States scattered over the Union, as well as the stated law of the text writers on criminal law. According to the law of this State, and a large number of other States in this Union, the impeachment of the character of the prosecutrix with respect to chastity must be confined to evidence of general reputation, and she cannot be examined as to particular acts of intercourse with other men, or that fact be otherwise so proven. So, gentlemen, the character of this woman for chastity is not in issue on the question of consent, and it has not been put in issue, because there has been no attempt to show that she is a woman of unchastity according to the rules prescribed for making such proof under the law of this State, and the other States I have just mentioned. So all argument, or suspicion set forth, or attempted to be set forth here, should not be considered, and must not be, on the question of her character as shedding light on the question of consent, because consent is not in the case. The law forbids rape, and that law is made for all, and intended to protect all, and will protect all womankind, regardless of their standing in society, or their past acts, or their station in life, or race or color, and I am not raising the color line there.

I am trying to tell you what the law is. It is intended for all, and if it does not reach out and protect all, it would not be a law that would appeal, or entitled to appeal to the sense of justice of mankind. Now, gentlemen, there are some other principles of law on which it is necessary for me to instruct you, in order for you to apply it in the consideration of the contentions of the parties. One is what is called the law of aiding and abetting. It is not necessary for me to undertake to give you the legal, technical definition of these words, but I can tell you in general terms what it means. It means this: that all parties who intentionally assist, encourage, or participate in the commission of a crime are just as guilty as if they had committed the crime themselves. To illustrate: If some party comes to you and tells you that he wants to break into a store in this town and wants to borrow your tools with which to break in, and you lend them to him for that purpose, and he breaks into that store with the tools, you are a burglar, and you are just as guilty of breaking into that store as if you had been there by yourself and had done it by yourself. That is true of any other crime. And further, and more on that subject. If you stand by while a crime is being committed by another or others, and you stand by for the purpose of giving aid, or encouragement by your presence, and that purpose is known to the party or parties committing the offense, and your mere presence does encourage him, and the act is done, then, gentlemen, you are an aider and abettor, and you are just as guilty as the party that committed the act. There is another principle of law involved in this case, and that is what is known as the law of conspiracy, and that is this, where two persons, or more, either by prearrangement, that is by prior agreement, or done in an emergency entered into for the common purpose of committing a crime, each is a conspirator, and if the purpose is carried out, each is guilty whether he did the overt act or not. Now, this conspiracy does not have to be proven by positive evidence, but its extent and its intent are to

be determined by you from the conduct and attitude of the parties at the time. A very wide latitude is allowed in proving a conspiracy. It extends to every thing that is said; everything that is done by any one of the conspirators in the execution or furtherance of the common purpose, and where there is a prima facie conspiracy established, any act or declaration on the part of the co-conspirators in connection with and in furtherance of the common purpose is admissible. That is the law, gentlemen, by which this case is to be tried, and the State must produce evidence of a type that is sufficient to satisfy you beyond all reasonable doubt of the defendant's guilt. Now, when the State read this indictment to you in this case, the defendant pleaded not guilty. Gentlemen, when he did that, that was a denial of every material element and ingredient of the offense. When he puts in that plea of not guilty, the law tells him that he can sit down and that he needn't offer any evidence at all, and when he puts that plea in, the duty shifts to the State to prove the offense charged, and every essential element embodied in it, by the evidence in the case, beyond all reasonable doubt, in your minds. The law protects a defendant that is haled into court under a charge, and it guarantees to him a fair and impartial trial, and says to him, that he cannot be convicted until the evidence in the case satisfies you beyond a reasonable doubt of his guilt, and when it says that, it says it to all men. It does not make any exceptions, as to who he is, where he lives, and it doesn't make any difference whether he is a citizen of Alabama or any other part of the world. The law guarantees that to him and he is entitled to it, and that is true, regardless of his station in life, or of his ignorance, or of his intelligence, or of his race, or of his color. That is the law, not only in Alabama, but that is the law wherever the English-speaking race rules. So solicitous is the law for an accused, that it declares that he is presumed to be innocent until his guilt is shown by the evidence beyond all reasonable doubt. That presumption is furnished him by

the law, in the entire case, and that presumption enters the trial with him, and it protects him and abides with him throughout the entire trial, and all the way through it, to a point where the evidence, if it ever does, satisfies the jury beyond all reasonable doubt of his guilt. It is a presumption, however, and like all presumptions, and all evidence for that matter, it is open to contradiction. As a presumption it is open to being answered, overcome or explained, and as a presumption it is answered and it is overcome whenever from the evidence, all the evidence in the case, you are satisfied beyond a reasonable doubt of his guilt. In all cases, gentlemen, and in this case, there are two questions under consideration. The first one is, was there any offense committed as charged in the indictment. That is the first thing you have to consider, because if there wasn't any offense committed—if there wasn't any rape committed—and you are not satisfied of that beyond a reasonable doubt, from the evidence in the case, then your duties would end there, and you would go no further, because if the law has not been violated, there is nothing else for you to do but bring in a verdict of acquittal. But, gentlemen, if after an examination of all the evidence in the case, you are satisfied beyond all reasonable doubt that Victoria Price was raped in this case, as I have defined that to you, then you take up the evidence and determine whether or not—did this defendant commit it, or did he abet—aid and abet another in its commission, as I have defined it to you, or did he enter into a conspiracy with others to commit the crime. That is what is called connecting the defendant with the offense. Now, in dealing with that phase of the case, the law requires that you must believe that from all the evidence beyond a reasonable doubt. Now, in considering the case, gentlemen, the law says that you must do it on the evidence. No verdict can be arrived at, either for conviction or acquittal, based on suspicion. The State cannot make out its case that way, nor can suspicion be thrown into the case, or considered for the purpose of creating a reasonable doubt in your

minds. It is just not to be considered for making out a case against the defendant, or for acquittal, because that is not evidence. In this case the evidence consists of witnesses appearing in court and taking the stand and testifying—oral testimony we call that. There is also evidence here that is documentary in its nature. Some of it has been offered in evidence, as I recall it, by what certain of the witnesses swore at some former trial of this case; that is, part of it has been offered; that has been admitted or shown to be the official transcript of the evidence in these former cases. That is to be examined and weighed just as if the witnesses appeared on the stand and testified as to the evidence set out. Then, there is a deposition in the case. That is, where a witness is absent the law allows the parties to file what we call interrogatories, propounding certain questions to the witness. That has been done here, and the opposite side has the right to propound what the law calls cross-interrogatories, that is, written questions by the other side addressed to the same witness, for the purpose of taking the deposition. When that deposition comes into court and is read to you, it has the same legal effect as if the witness had appeared here and testified from this stand to the facts stated in the deposition and must be considered by you in that way. It is as much entitled to your consideration and credence as if the witness had been in court and said the things therein set out. Now, gentlemen, there is what the law knows as direct evidence and indirect evidence, or more often called circumstantial evidence. Direct evidence is where a witness is brought into court and testifies what they saw and what they heard—either orally or by deposition—or what was said on the other trial. That is direct evidence. Indirect evidence is a very different kind of evidence. It is not so easily defined, however, as it is to illustrate it. Of course, what you are to try and do with circumstantial evidence is apply your common sense, your past experience in life, your observation of men and affairs, and you are to give consideration to the positive evidence

so as to draw a reasonable conclusion from what has been said from the witness stand, in order to ascertain whether or not the thing that is sought to be proven could reasonably follow, or failed to follow from the facts proven. There have been some illustrations of circumstantial evidence before you that have been very good. I will content myself by making just one illustration—and, by the way, most cases have to be made out, at least in part, or most offenses have to be made out in part—by circumstantial evidence. If you saw a man standing here inside of the door with a gun in his hand levelled at a man standing out there by the door; if you saw him pull the trigger and saw the flash of the pistol, and heard the explosion, and saw the man out there fall and die—the question is, what killed him? You would say that shot, but you never saw the bullet. You just applied your common sense. You saw the man standing there; the man had a loaded pistol and fired when he had it levelled at that man outside, and when he fired the man fell dead. That is circumstantial evidence, strongly put, but nevertheless circumstantial evidence. Now, under the law of rape, the law doesn't require that the testimony of the prosecutrix, that is, of the party injured and raped—it doesn't require as a necessary something that she be corroborated. Corroboration means to strengthen her testimony in some material way. If you are satisfied beyond all reasonable doubt from her testimony taken in connection with all the other evidence in the case, that she was raped, why that has made out the offense, whether anybody else says she was raped or not. That is necessarily true, and necessarily sound, because if that wasn't true, then a woman raped, when no one was present but herself, never could receive the protection of the law. Now, I don't mean to say by that, that corroboration is not to be desired. She may swear to it herself, and the State has a right to corroborate such testimony if it sees fit to do so. The State, in this case, says that it has corroborated her. The State claims that it has corroborated her by the testimony of Gilley. Well, that would

not be a corroboration unless you believe Gilley. It is for you to determine whether or not you believe Gilley. The State further contends that she is corroborated in another way, for instance, it claims that she is corroborated by the claim that there was a fight on this train before it reached Paint Rock, and they claim that Victoria Price said there was a fight, and that what Victoria Price said happened, happened after the fight. If that evidence is true about having a fight on the train, that may be corroborating evidence, and it may not. The defense is entitled to be heard on that evidence, just like he is on all the other evidence in the case, and the defense contends, as I understand it, in effect, that there was a fight on the train, but that it didn't have anything to do with this rape. These negro boys and white boys got into a racket about something else, got into trouble, got to throwing rocks, which finally developed into a fight—that is the contention of the defendant. Well, if that is true, and nothing happened after that on the train, that answers the theory of the State. Of course, there are matters that are contended for here by both sides, one claiming that it corroborates the testimony on their side, and the other contending that it does not; also there is a contention that the evidence offered for the purpose of corroboration is not true. That is a matter that I do not deal with. That is for you to look at and determine what it shows, or tends to show. Something has been said about not calling witnesses in the case at this trial and the other trial. That is not to be considered by you either against the defendant or in his favor. The law is, that it is open to both sides to use a witness when he is in court. It doesn't make any difference who brought him here. If he is here, he is accessible to either side. What the law is after is the truth, and it does not discriminate for or against a party that brought the witness in court, or who put him on the stand. The question is, did he take the stand and testify, and if he did, then is he worthy of belief, as shown by all the facts in the case. Of course, it is a rule of law that when a party puts a witness on the stand, he becomes

his witness, and by putting him on the stand, the law says that he vouches for his truthfulness. That is the rule. Now, there could be exceptions. Of course, the law wouldn't allow anybody in a suit in court to be deceived or misled as to what a witness is going to say. If he tells you certain things off the stand, and if he then gets on the stand and tells the reverse, the law would not charge the party with the evidence of that certain witness, but there must be some evidence in the case that the witness had misled the party, or did deceive them, before that exception would apply. Now, gentlemen, I have all the way through referred to proving things to you beyond a reasonable doubt. I feel justified in having done that because that is one of the outstanding principles of the criminal law; that no man can be convicted of any crime, regardless of who he is, or the gravity of the crime, or what not, until the jury is convinced, not from some arbitrary idea that they may have in their minds, or wish or desire, but from the evidence, and the evidence alone in the case, and the legal, reasonable conclusions to be drawn therefrom. I reckon I might say that there has been a great deal of criticism on that part of the law, but, gentlemen, that is the law, and, so far as I am concerned, I think it is right, and I think it is sound, and whether it is or not, I state to you that it is the law, and it becomes your duty to follow it. Now, gentlemen, I can't help you much with the witnesses. They have taken the stand and you have seen them and heard them. As you have probably heard me say, when a witness is sworn and takes the stand, not only what he says is evidence, but his very act, gesture and his every move is evidence for you to look at and consider. As I have said before, the Supreme Being has stamped on his brow an index to his character what kind of a man he is. That is not always easily read, but the handwriting is there, if you can discern it, and sometimes you can, and it is your duty to read it, if you may. It is open to both sides, both to the State and the defendant, to assail the character of a witness for truthfulness, but the way to do that is to bring

in court and put on the stand witnesses who say that they know the reputation of the witness assailed, in the community where he lives, and that it is bad, or that he would not believe him on oath, or something like that. Neither party is authorized to assail the character of a witness by innuendo or gibes at him about some particularly heinous conduct, or mistake, or crime, to say that his character is bad. I don't mean to say, though, gentlemen of the jury, that if these things are developed in the evidence that you are to ignore them. Well, his character cannot be assailed in any other way than I have mentioned, that is, bring in evidence to prove what sort of man he is in the community; what he is reputed to be. Of course, you can't prove his character, technically speaking, because that involves something that is impossible for any witness to testify directly about. That inquires into the man's mind, his heart, his desires, his aspirations, etc., but the law says that you can prove that character by proving his reputation, that is what he is reputed to be in the community, and that takes the place of the other method, and can be pursued, and it is just as good. You look to the evidence, gentlemen, to weigh and determine whether or not there is in the evidence anything indicating that any witness who has testified has any bias in the case, either for one side or the other. Does the evidence show that he has an interest in the case one way or the other? Of course, under the law, when the defendant takes the stand and testifies in his own behalf, the law declares that he is an interested witness. He is interested, of course, in the result of the suit. But, gentlemen, a witness may be partisan, and the evidence may show that, or he may be biased, and the evidence show that, or he may be interested as a defendant. The law does not say that you must disbelieve him or discard his evidence; it simply says that you are to bear that in mind when you are examining his testimony. The fact is, the testimony of all the witnesses is examined with that kind of a light shining on it, as to what they have said. It is only a recognition of human nature, and although you find that the party is biased,

if you should find it, or that they are interested, yet, gentlemen, notwithstanding, if you still believe what they have said about it, the law says that it is your sworn duty to accept the testimony and weigh it, and give it proper credence. Now, that same rule or principle applies in weighing the testimony of a witness that has been contradicted or has falsified himself in some part of the evidence. Of course, you are not authorized to find that he has done that unless the evidence convinces you on that point, but if the evidence should convince you that any witness on either side of the case is mistaken about any thing, or has purposely falsified himself on it, yet, gentlemen of the jury, that in and of itself does not, as matter of law, require you to disregard his whole testimony. The law is a reasonable thing, and it applies its reason, and it is this, that notwithstanding you may have made an honest mistake, or may have made a dishonest mistake in the testimony, yet there are other parts of his testimony you believe aside from that, you believe them to be true, the law says it is your duty to receive those other parts of his testimony and give it proper weight and credence. In short, the law says, weed out and discredit the unworthy part of his testimony and retain the good. As I said, the two main things you are trying to find out here is, whether or not Victoria Price was raped, as alleged, and whether or not this defendant was connected with the rape. Did the defendant do it, or did he aid and abet or conspire with the others to do it, as I have defined these terms to you? What you are after is the truth of the matter—not absolute truth; that cannot be acquired or ascertained in the court of the evidence of man, because all men may err, and we know that frequently they do. The law doesn't say that you must find one way or the other in this case to a mathematical certainty, but where there cannot be any doubt in your minds, and, by the way, a doubt is not sufficient. It must be a reasonable doubt, and a doubt for which a reason therefor must be found in the evidence in the case. So it must be beyond a reasonable doubt from all the evidence in the case. Gentlemen, if after consid-

ering the evidence under the rules I have tried to explain to you, and applying it to the law, as I have undertaken to give it to you, you are satisfied of this defendant's guilt beyond a reasonable doubt, then another question arises that you must deal with. Your verdict in that event may assume two forms. First it could be: "We, the jury, find the defendant guilty as charged in the indictment and fix his punishment at death." That is one form. If, after weighing the evidence like I told you, you do not reach the conclusion that death should be the punishment, then the form of your verdict would be: "We, the jury, find the defendant guilty as charged in the indictment, and fix his punishment at confinement in the state penitentiary for (so many years, not less than ten, any number of years above ten that you in your sound judgment, under the evidence, think right and proper)." Now, there is a good deal of chimney corner law about that. It is not a question of life imprisonment. The law doesn't say anything about that. It says not less than ten years, and any number of years above that. Gentlemen, that is all the law, I think, that it is necessary to give you. I want you to take this case just like a jury would take any other case, remove from your minds everything but an honest, faithful and painstaking consideration of the evidence in the case, and bring in a verdict that answers that conclusion. Now, that is the State's side of it. If the evidence in this case, as I have been telling you all the way through, does not convince your minds beyond all reasonable doubt of the guilt of this defendant, then the law and justice says that he ought to be acquitted, and if that is your conclusion, then the form of your verdict would be: "We, the jury, find the defendant not guilty."

Mr. Leibowitz: We have some exceptions to the Court's charge. I except to that part of your Honor's charge to the jury in the following words and figures: "Evidence of similar conduct is wholly out of place and improper."

Court: I don't believe I said it that way. I said it in connection with something else, but that there may be no misunderstanding about that, I will state to you gentle-

men, I said that it was wholly out of place towards establishing or tending to establish the question of consent, because consent did not enter into the defense. Of course, her conduct and what she said, as shown by the evidence in the case, is evidence in the case in shedding light on what credence you will give to her testimony.

Mr. Leibowitz: I except to the charge as reiterated. Then I except to that part of your charge wherein you charged the jury that the character of this woman is not in issue in this case, because consent is not alleged, and that the character of the woman is only an issue in the case where the defense is consent.

Court: Very well.

Mr. Leibowitz: Further, I except to the statement of the Court that all argument on or any references by counsel in argument must not be considered on the question of consent, and I ask that you instruct the jury that they may consider the question of character, if that character is disclosed by the evidence, by her deportment and demeanor on the stand.

Court: I have already told them that.

Mr. Leibowitz: I am going to ask that you charge the jury as requested.

The Court: I can't do that. My impression is that that is not the law.

Mr. Leibowitz: I am now asking that your Honor charge specifically that this jury may and must consider on the question of how much belief they are going to give this witness, or any other witness, whatever evidence this jury has found before it which would shed any light on the type of person it is, her conduct on the stand, as to her behavior, and all the circumstances arising out of the evidence; that they may and must consider all this evidence in determining how much belief they will give to a person of that type on all questions.

Court: I decline to give it the way you have presented it.

Mr. Leibowitz: I except to that portion wherein you charged the jury that the mere presence renders one guilty as well as he who committed the crime.

Court: I don't think that is the way I stated it. I said that if his presence was known to the party committing the act, and his presence encouraged the commission of the act, he would be guilty. If I didn't say it that way, I say it that way now.

Mr. Leibowitz: Exception. We ask the Court to charge the jury that Victoria Price is an interested witness as matter of law.

Court: Well, that is not the way to make that sort of request; it is not a legal request, but I will state to the jury that regardless of the manner in which you have attempted to request it, that the jury may look to all the evidence in the case in weighing the testimony, and that she is the prosecutrix and that does make her interested in the result of the suit.

Mr. Leibowitz: I except to that portion of your charge wherein you charged the jury that if a witness has wilfully falsified to any material fact in this case, that the jury must believe that portion of her testimony that is credible and disregard the false testimony.

Court: I don't think I said that. I said they "may." I didn't tell them they "must" do anything. If I did, I say that is wrong. I have no right to sit here and tell the jury what they must do. I told them that they "may."

Mr. Leibowitz: In that connection, may I request on that point, that you charge the jury that if any witness wilfully testifies falsely as to a material fact in this case, the jury is at liberty to disregard his or her entire testimony, if they see fit.

Court: I decline that in the manner put.

Mr. Leibowitz: I except to that portion of the Court's oral charge, that the only way to assail the character of a witness for truthfulness is to produce witnesses from the community where she lives to testify that her character is such that they would not believe her, I except to that, and ask that you charge as follows: The jury may, from her testimony and behavior on the stand, and from the evidence developed from her on direct and cross-examination, weigh such evidence to either rebut her testimony,

or come to the conclusion that she is unworthy of belief, and that no witnesses are necessary to appear here from her community, if the jury believe from the evidence she is unworthy of belief.

Court: I decline that in the way in which it is put.

Mr. Leibowitz: I will ask that your Honor charge the jury as to what is a reasonable doubt.

Court: I will do that, I think. It is a pretty simple term; sort of like the word "it"; it's hard to explain. The best way I know of is to say this to you, and I think I said that, it means, of course, more than a doubt, that would just be a doubt. It must be reasonable. A doubt for which a reason can be given. If after you go into this evidence and decide it. Very well, while you are doing that, or at the conclusion of it, there arises in your mind a doubt of the guilt of the defendant, then the next thing for you to do would be to examine the evidence and see whether or not that doubt that came into your mind is one for which you can find a reason in the evidence. That's about all I want to say on that.

Mr. Leibowitz: May I ask you to charge the jury that if these men, or any one of them, or any man in the jury box, has a reasonable doubt, founded on the evidence in this case, that it is the duty of that juryman to maintain his ground, stand his ground, no matter how long he is in the jury room, unless and until his doubt can be eliminated by fair argument from the evidence; it doesn't make any difference whether they are eleven to one, or how they stand, if a juryman has a reasonable doubt, from the evidence, it is his duty to stand his ground, stick to his opinion.

Court: You are drifting into an argument.

Mr. Leibowitz: That's what I have in mind, Judge.

Court: I could decline all that; the law doesn't require me to do this, but I will do it. Gentlemen of the jury, there can be no conviction in this case unless all twelve of you agree to it. I imagine you know that. There are twelve of you, and all twelve of you have to agree on a verdict

before you bring it into court. Each man that goes into that jury room has a right to his own honest convictions on the evidence, after he has heard the position of the other jurors. You don't go in there with a view of just setting your mind and keeping it there, and not listen to anybody else's views. It is just as much your duty to listen to the other juror's statement of his beliefs, or lack of beliefs about it, as it is for you to have your own views. You do not go into the jury box with any pride of opinion of your own. You go in there for the purpose of reasoning together on the case; it is your duty to do it. If, after considering the evidence, you have an opinion of your own as to what the verdict ought to be, and some other member of the jury, or some other jurors, perhaps, have their views, it is your duty to listen to them, and if after listening to them, you find that they are right and that your first impression was wrong, it is your duty to join with them. Provided, of course, at all times, you are satisfied beyond a reasonable doubt of the result of that verdict.

Mr. Leibowitz: I except to the Court's refusal to charge as requested.

Court: I just voluntarily did that. I was under no duty to do that at all. I am trying to give them everything I can that will be of help to this jury.

Mr. Leibowitz: There is one other thing, I don't know whether it is proper that I ask this charge—that you charge the jury that they are under no legal duty to agree, if there is any difference of opinion among them.

Court: I think I have told them that.

Mr. Leibowitz: That's all.

(All these requests for instructions to the jury were read orally to the Court. The Court beforehand had informed defendant's counsel that special requests for instructions must be in writing.)

On January 2, 1933, defendant filed a motion for a new trial in words and figures as follows:

(Caption.)

Comes the defendant Clarence Norris, named in the above styled cause, by his attorneys, Samuel S. Leibowitz, Joseph R. Brodsky, George W. Chamlee and Osmond K. Fraenkel, and moves the Court to set aside the verdict and judgment granted in this cause and to grant a new trial, and for cause of new trial assigns the following reasons and causes, separately and severally reserving, however, the right, in accordance with the suggestion made by the Court, to file an amended motion for a new trial after receiving the stenographer's minutes of the trial so as to incorporate therein any matters omitted herefrom or not fully covered herein.

I

A new trial should be granted because the indictment found against your defendant in the above entitled cause is void for the following reasons:

a. That said defendant is a Negro.

b. That there were at the time of the finding of said indictment Negroes residing in Jackson County, where said indictment was made, who were, under the laws of the State of Alabama, duly qualified for jury service.

c. That in fact no Negroes were placed upon the jury roll of Jackson County from which was drawn the grand jury which found the indictment herein.

d. That the names of Negroes purporting to appear upon the jury roll in Jackson County when the same was produced in Court in November, 1933, were not in fact upon said jury roll at the time when said indictment was found, but were fraudulently placed thereon subsequently.

e. That the finding by this Court that such names were not fraudulently placed thereon subsequent to the

indictment herein was contrary to the evidence and was arbitrary and void and in violation of defendant's rights under the Constitution of the United States and its amendments and was in violation thereof.

f. That Negroes had been systematically excluded and were excluded from said jury roll of Jackson County solely by reason of the color and race of such Negroes.

g. That a motion was duly made prior to the trial of the indictment herein to quash the said indictment by reason of the foregoing, in that such exclusion was in violation of the Constitution of the United States and its amendments and in violation of the Constitution of the State of Alabama.

h. That the denial by this Court upon the hearing had upon said motion after evidence had been introduced on behalf of defendant in substantiation thereof was contrary to the evidence and was arbitrary and in violation of defendant's constitutional rights as aforesaid, exception to which was duly taken.

II.

A new trial should be granted because requests for a change of venue were improperly denied in the following manner:

a. In March, 1933, before Hon. A. E. Hawkins at the Circuit Court of Jackson County, defendant requested a change of venue to Jefferson County, Alabama, on the ground that a fair trial could not be had in any of the counties in the neighborhood of Jackson County. That said request was denied and instead a change of venue was granted to Morgan County, to which denial defendant duly excepted.

b. That by reason of the hostile sentiment and feeling which dominated the inhabitants of Morgan County, a fair trial was impossible in said county.

c. That this feeling became manifest during and after the trial of defendant before Hon. James E. Horton in Morgan County in April, 1933.

d. That thereafter and in November, 1933, defendant applied to Hon. W. Callahan in Morgan County for a further change of venue, requesting a transfer of the trial of this case to Jefferson County upon voluminous papers and affidavits on file with this Court, which are hereby made a part hereof as though fully set forth herein, which motion was denied and exception duly taken.

e. That upon the examination of the prospective jurors it appeared that a very large number of them expressed fixed convictions concerning the guilt of this defendant and his other co-defendants and on the prior trial of Haywood Patterson many of the prospective jurors expressed similar fixed convictions.

f. That the failure of the Court to grant a change of venue to Jefferson County was a denial to the defendant of his rights under the Constitution of the United States and the Constitution of the State of Alabama and was an abuse of judicial discretion.

III.

A new trial should be granted because the Court refused to quash the venire for the following reasons:

a. That there were at the time of the preparation of the jury roll of Morgan County from which were drawn the names of the prospective jurors called to try this defendant Negroes residing in said county duly qualified under the laws of the State of Alabama for jury service.

b. That there were no Negroes upon the jury roll of Morgan County from which were called the names of the said prospective jurors.

c. That Negroes have been systematically excluded and were excluded from said jury roll of Morgan County solely by reason of the color and race of such Negroes.

d. That a motion was made prior to the impanelment of the trial jury to quash the venire on the ground that said exclusion was in violation of the Constitution of the United States and its amendments and in violation of the Constitution and laws of the State of Alabama.

e. That the denial by this Court of said motion upon the hearing had thereon after evidence was introduced in behalf of the defendant in substantiation thereof was contrary to the evidence and was arbitrary and in violation of defendant's constitutional rights as aforesaid, exception to which was duly taken.

IV.

A new trial should be granted because the jurors were improperly drawn, in that after the original venire was exhausted the Court arbitrarily selected jurors from the Town of Decatur, putting aside names drawn by him from other neighboring places, thus violating the statute governing such situations.

V.

A new trial should be granted because the Court exerted pressure upon the prospective jurors in that he did not permit them to state whether or not they had fixed opinions concerning defendant's guilt until after he had given a definition which was not in accordance with law, namely, that a juror was qualified regardless of his convictions about the guilt of defendant unless his opinion was such that he would not acquit even if defendant could prove his innocence to a moral certainty, in that this conveyed to the jury the impression that there was imposed upon the defendant the duty of proving his innocence and permitted jurors to serve who had opinions which would require affirmative testimony on the part of defendant to remove, and in particular by reason thereof one Humphrey sat as a juror who had in the previous case of Haywood Patterson declared that he had a fixed opinion.

VI.

A new trial should be granted because the verdict of the jury and the judgment entered thereon are not supported by sufficient legal evidence and are against the weight of evidence and the law and that all the credible evidence adduced at the trial failed as a matter of law to establish beyond a reasonable doubt the guilt of this defendant.

VII.

A new trial should be granted because the Court refused to permit this defendant to prove material and necessary matters in his defense as follows:

a. Victoria Price, the prosecutrix herein, had testified upon the trial hereof that she had been raped by this defendant and others and in substantiation of such claim stated that semen from her body came upon her clothing.

b. It was material for defendant to show that the semen found in the body of Victoria Price and which she claimed was to be found upon her clothes was the result not of any rape committed upon her by this defendant or his other co-defendants but as the result of voluntary acts of intercourse committed by Victoria Price with others in the days immediately preceding the occurrence of the alleged rape.

c. This defendant sought to establish this material and necessary element in his defense in the cross-examination of said Victoria Price and in the cross-examination of Orville Gilley, but was not permitted to do so by the Court.

d. Defendant also sought to prove this fact by the testimony of Lester Carter, who was specifically asked whether he had not observed acts of intercourse between Victoria Price and one Tiller within two days of the occurrence of the alleged raping, but said witness was not permitted to answer such questions. Defendant also sought to prove this fact by the deposition of Ruby Bates.

e. In connection with this matter this defendant also sought to establish that Victoria Price had given a false account of her actions on the night preceding the alleged raping in that she had at the various trials at Scottsboro and also at the trial of Haywood Patterson before Judge Horton in April, 1933, testified that she had spent that night in Chattanooga at the home of one Callie Brochie, whereas in fact she had spent that night in the jungles of Chattanooga in company with Ruby Bates, Lester Carter and Orville Gilley, and in order to establish this fact sought to cross-examine both said Victoria Price and said Gilley on the subject and offered to prove the same by the testimony of Lester Carter and the testimony of one Ramsey, who had seen Victoria Price there, as well as by reading the testimony of one Lewis from the record taken before Judge Horton, said Lewis having since deceased, all of which was not permitted by the Court.

f. That all of the foregoing matters were received in evidence by Judge Horton at the trial of Haywood Patterson before him in April, 1933, and were considered by him as reasons for reaching the conclusion that the testimony of said Victoria Price was unreliable and not entitled to credence and as reasons for setting aside the verdict of conviction against this defendant on the ground that the same was against the weight of the evidence.

g. That by the various rulings of the Court upon the trial of this case to which reference has heretofore been made and to which exception was duly noted in each instance this defendant was arbitrarily and illegally deprived of an opportunity to prove an important element in his defense and to disprove the contentions of the prosecution.

VIII.

A new trial should be granted because the Court refused to permit the defendant to ask Victoria Price on cross-examination whether or not she had ever been convicted of a crime involving moral turpitude and specifi-

cally and separately whether or not she had ever been convicted of adultery, fornication and lewdness, to all of which refusals exceptions were duly taken.

IX.

A new trial should be granted because the defendant was not accorded a fair and impartial trial in accordance with the Constitution of the United States and the amendments thereto and the Constitution of the State of Alabama for the following reasons:

a. The defendant was tried in a county which seethed with hostility against him, his co-defendants and his attorneys, by reason of which it was necessary to have armed guards at the trial and to furnish chief counsel for the defendant with armed protection.

b. That many prospective jurors had fixed opinions concerning defendant's guilt.

c. In that the Court denied the request of the defendant to excuse for cause a number of prospective jurors who admitted that they had a fixed opinion which would require defense testimony to change.

X.

A new trial should be granted because the Trial Court was prejudiced against this defendant and made its prejudice manifest to the jury throughout the trial and refused defendant the fair and impartial trial guaranteed to him by the Constitution and laws of the State of Alabama and the Constitution of the United States in the following respects, which are not intended to be exhaustive in that defendant has not before him the record from which to specify all the acts complained of:

a. In that the Court showed resentment and animus toward defendant's counsel, as appears throughout the record.

b. The Court characterized questions by defendant's chief counsel, Samuel S. Leibowitz, as vicious and on numerous occasions when sustaining objections interposed by the prosecution unnecessarily commented to the jury that the questions excluded were improper and illegal, and in some cases adding that defendant's counsel knew that they were, whereas the Court made no similar remarks concerning improper questions asked by the prosecution when objections to these were sustained.

c. That on numerous occasions the Court objected to questions asked by the defendant's attorneys without any objections being made by the prosecution, and frequently suggested to the prosecution that it enter objections.

d. That the Court on many occasions came to the assistance of witnesses for the prosecution when the same were being pressed by defendant's counsel and arbitrarily and illegally interfered with the improper conduct of the cross-examination by defendant's counsel.

e. That the Court did not give defendant an opportunity of having a jury free from preconceived opinion against him, in that the Court refused to permit the prospective jurors to state whether or not they had such opinion until the Court had first given an alleged definition thereof, and that such definition as given by the Court was improper and prejudicial to the defendant.

XI.

A new trial should be granted because of errors committed by the Court in his charge as follows:

a. The Court charged that the mere presence of a person might be sufficient to make him an abetter if his presence encouraged or aided another person to commit the offense without requiring the jury to find that the defendant intended that his presence should have such result.

b. The Court charged that the previous conduct and character of the complaining witness Victoria Price were immaterial and irrelevant.

XII.

A new trial should be granted because of the Court's refusal to charge a request by counsel for the defendant as follows:

a. The refusal to charge that the jury might disregard all of the testimony of a witness who had testified falsely about any material fact.

b. The Court refused to charge that if any among the jurors had a reasonable doubt after a consideration of the evidence it is his duty under the law to stand his ground until and unless that doubt could be removed by logical reasonable argument based on evidence.

All of the foregoing grounds are set forth separately as well as together, and in support thereof reference is made to affidavits annexed hereto as well as to the record and motions heretofore filed and to the opinion of Judge Horton hereinbefore referred to on file with this Court.

Dated, New York, December 30th, 1933.

Respectfully submitted,

SAMUEL S. LEIBOWITZ,
JOSEPH R. BRODSKY,
GEORGE W. CHAMLEE,
OSMOND K. FRAENKEL,
Attorneys for defendant
Clarence Norris.

Annexed to said motion was filed the following affidavit:

(Caption.)

ELIAS M. SCHWARZBART, being duly sworn, deposes and says:

That he is an attorney at law duly admitted to practice in all the courts of the State of New York and has been and still is an assistant on the staff of the attorneys for the defendant. Your deponent makes this affidavit in support of the motion for a new trial.

Your deponent attended the trial of Clarence Norris held in the first week of December, 1933, in the Circuit Court of Morgan County at the City of Decatur, and also the trial of Haywood Patterson, a co-defendant, had immediately prior thereto, and was present practically throughout the entire proceedings at both trials.

Your deponent avers that the trial of Clarence Norris was had under conditions and in an atmosphere of extreme and palpable hostility and prejudice against the defendant, his co-defendants and attorneys for the defendant, so that at all times the lives of the defendant, his co-defendants and counsel for the defense were in constant danger, and in the prevailing atmosphere of prejudice the defendant could not and did not procure a fair and impartial trial.

That in order to safeguard the lives of the defendant, his co-defendants and their counsel, the Court found it necessary to swear in a considerable number of deputies, including approximately twenty deputies from Birmingham. That these deputies accompanied the defendants and their counsel to and from the court room and constantly watched over them.

That the prevailing sentiment of hostility against the defendant and his co-defendants was eloquently demonstrated by the fact that during the examination of the prospective jurors in the above entitled cause and in the case of the State of Alabama against Haywood Patterson it appeared that a considerable portion of them had fixed

opinions concerning the guilt of the defendant and his co-defendants. That the number of those prospective jurors in the Patterson case who stated they had fixed opinions was approximately twenty and in the Norris case the number was approximately thirty-five. The exact number will be presented to the Court in the amended motion, as the same will be revealed by the transcript of the record now in preparation. That this number would undoubtedly have been even greater had it not been for the fact that the Court defined fixed opinion in a manner to include many prospective jurors who would otherwise be excluded, as is set forth in the motion for a new trial.

ELIAS M. SCHWARZBART.

Sworn to before me this
2nd day of January, 1934.

FAY SIEGARTEL,
Notary Public,
Kings County.
Kings Co. Clks. No. 1104, Reg. No. 5465.
N. Y. Co. Clks. No. 1087, Reg. No. 58632.
Bronx Co. Clks. No. 86, Reg. No. 2958-35.
Queens Co. Clks. No. 1973, Reg. No. 7864.
Certificate filed in Westchester County.
Commission expires March 30, 1935.

On January 2nd, 1934, simultaneously with the mailing of the foregoing motion, defendant's counsel telegraphed to the Court stating that the motion had been mailed and requesting a continuance. The Court on January 4th wired to counsel for the defendant granting the continuance to January 27, 1934. On January 10, 1934, counsel for the defendant wrote to the Court advising it that the minutes had not yet been received and requesting a further continuance so as to permit amendments if deemed necessary. The Court then suggested alternative dates to counsel for the defendant, and the date of February 24th was selected by counsel. The Court continued the matter to February 24, 1934.

A copy of the foregoing motion was served by mail on the Attorney General of the State of Alabama, acting as solicitor for the State, and retained by him without objection.

On February 22nd, 1934, defendant filed the following additional affidavit:

(Caption)

State of New York,
City of New York,
County of New York—ss.:

ELIAS M. SCHWARZBART, being duly sworn, deposes and says:

That I am an attorney at law duly admitted to practice in all the courts of the State of New York with offices at 100 Fifth Avenue, Borough of Manhattan, City and State of New York. I have been and still am an assistant of the staff of the attorneys for the defendant. I make this affidavit in support of a motion for a new trial herein.

I attended the trial of Haywood Patterson and also the trial of Clarence Norris held in November and December, 1933, in the Circuit Court of Morgan County at the City of Decatur before Honorable Judge W. W. Callaghan. I also attended the previous trial of Haywood Patterson held in the Circuit Court of Morgan County at the City of Decatur, before Honorable Judge James E. Horton in March and April of 1933. I was present in court throughout the aforementoined trials and all the preliminary proceedings had in connection therewith, and particularly during the times that the events and happenings hereinafter set forth occurred. I was present in court during the previous trial of Haywood Patterson and had before the Honorable Judge James E. Horton in April, 1933, throughout the time

that Victoria Price, the prosecutrix, and the following witnesses on behalf of the defence testified: Lester Carter, Ruby Bates, George W. Chamlee, Beatrice Maddox, Dallas Ramsey and M. L. Lewis. I distinctly recall the testimony given by each of the aforesaid persons at that trial. However, since that time and for the purpose of preparing this affidavit, I have refreshed my recollection of their testimony by carefully reading the same as it appears in the official transcript of the aforesaid trial as certified by Harold Harlin, official court stenographer. I will briefly summarize the substance of the testimony of the aforesaid witnesses concerning the events that transpired on the day or days immediately preceding the alleged attack, all of which said testimony was excluded by Honorable Judge W. W. Callahan in the trial of the above entitled cause, and as the defense contends, erroneously.

The testimony of Victoria Price given at the trial in April, 1933 of Haywood Patterson, as to the events occurring up to the time that she boarded the train at Chattanooga is in substance as follows:

> Mrs. Callie Brochie was a woman in Chattanooga. She kept me and Ruby Bates the night we went to Chattanooga. Ruby Bates and I left Huntsville for Chattanooga on March 24. We were both dressed in overalls. Lester Carter did not leave with us. I know Jack Tiller, he was my boy friend before I left Huntsville. He did not introduce me to Lester Carter, I was introduced to Lester Carter in Scottsboro in the jail. Tiller, Ruby Bates and Lester Carter did not come to my home one night two or three days before I left Huntsville. I did not tell Lester Carter I would find him a girl. I did not introduce Ruby Bates to him. No one knew we were leaving Huntsville but me and Ruby Bates, we were hunting work. I did not go walking with

Tiller, Carter and Ruby Bates along the L. & N. railroad tracks the night before I left Huntsville and I did not have intercourse on the ground with Tiller while Ruby Bates had intercourse with Lester Carter right beside me. I never was in Lester Carter's company before I was in Scottsboro in jail. I did not have intercourse with Tiller a short time before I left Huntsville on the railroad tracks. I did not stay all night with Tiller in a box car before I left Huntsville and neither did Ruby Bates with Lester Carter. I did not meet Tiller, Lester Carter and Ruby Bates and make plans to go on this trip to Chattanooga. Tiller was at my home the night before I left Huntsville. I did not go walking or riding with him. Tiller did not see me off at the train. I did not go to Chattanooga with Lester Carter. We were dressed for the trip in a shirt, step-ins, three dresses, overalls, coat or wrap, hat, stockings, shoes and garters. We arrived in Chattanooga between six and eight. We did not intend to put up at Callie Brochie's that night, we were hunting a place to stay. I was broke. I knew Mrs. Callie Brochie lived in Chattanooga, I did not know her name, only Mrs. Callie. I did not meet Gilley that night in the railroad yards in Chattanooga. When I got off at Chattanooga there was a boy standing at the depot and I asked him did he know where we could get a place to stay. I first asked him did he know a woman by the name of Callie and he said there was a Callie down here on 7th Street, four or five houses from the corner. He did not go with us, he told us how to get there and we went alone. I had never been to that house before. The best I remember it was a four or five room house, kinda of a boarding house, wooden. Mrs. Brochie was sitting on the porch. We stayed at her house that night and

had a meal there, Mrs. Brochie served us. I did not know her before as Mrs. Brochie, I knew her as Martin. I asked the boy did he know where Mrs. Callie lived. He said there was a Mrs. Brochie down there at that street and her first name is Callie. I did not know for sure whether the lady I had in mind was Mrs. Brochie. We got up the following morning. When we got to Mrs. Brochie's house we did not have overalls on, we had pulled them off at the depot and left them under a rock. The following morning (March 25) Ruby Bates, Mrs. Brochie and myself rode out in Mrs. Brochie's car to a mill looking for work. I do not know the name of the mill, I can't describe it. The best I remember, we went to only one mill. I do not remember whether I testified at the other trials that we went to every mill in town looking for work. We came back in the car to Mrs. Brochie's house, we stayed there a little while and had a meal there. Then Mrs. Brochie drove us down to the depot in the car. It took about five or ten minutes. I do not know how far it was from her house to the railroad yards. We left Mrs. Brochie at the railroad yards. I found out when the train was coming back to Huntsville by asking a man there, and he said between eleven and twelve. It wasn't a colored man. We did not meet Gilley or Lester Carter at that time, it was later. It is not a fact that I, Ruby Bates and Lester Carter arrived in Chattanooga about 7:30 (March 24). I never seen Lester Carter until they put us in jail in Scottsboro. We did not meet Gilley that night by Gilley asking Lester Carter for a match. Lester Carter, Ruby Bates, Gilley and myself did not then go into the "hoboes jungle" and build a fire. I do not know anything about the jungles. Lester Carter and Gilley did not then leave us

and were looking for food and then bring some back. Gilley did not sit with us all in the jungle, singing songs that night around a campfire. I did not know anything about that, I was not in any jungles, I was at Mrs. Brochie's. Gilley did not have intercourse with me that night in the jungle. I do not know a negro by the name of Lewis, I do not know any negroes. I have never been to Lewis' cabin in the jungle on other occasions asking for food while hoboing from Huntsville. I never was in Chattanooga before. It is not true that I sat there all night in the jungles with Ruby Bates, Lester Carter and Orville Gilley and that two negroes came along and I asked them when the train for Huntsville was going by. I never spoke to a negro while I was in Chattanooga. I did not tell these two negroes my old man had gone to get something to eat and I was waiting for my old man to come back. I did not tell one of the negroes I was hoboing, and they did not tell me that the Champion Mill was hiring help and suggest that we go try them. There was no fight between Lester Carter and one of the negroes because I told him the Negroes had insulted me.

The following, in substance, is the testimony given by Ruby Bates at the trial of Haywood Patterson in April, 1933, before Honorable Judge James E. Horton, concerning events that transpired up to the time she boarded the train at Chattanooga, together with Victoria Price, Lester Carter and Orville Gilley.

I know Victoria Price, I worked in the mills with her in Huntsville. Victoria Price and I met Lester Carter and Tiller when they were on the chain gang. This was before we left Huntsville for Chattanooga. A short time before we left Huntsville, Victoria Price and I met Lester

Carter and Tiller. They came to the mill one afternoon where we were, on Monday afternoon, before we left on Tuesday. The four of us all left and walked up the Pulaski Pike to the L & N Railroad. It was night time. I had intercourse that night with Lester Carter, and Victoria Price had intercourse with Jack Tiller in my presence. It started to rain and got into the box car and the four of us stayed there the rest of the night. That night we made an appointment to go out of town. The next day, Tuesday, Lester Carter, Victoria Price and I left Huntsville together. Tiller did not join us. We went to Chattanooga. We did not spend the night at Callie Brochie's. We spent the night in the hobo swamps near the railroad yards, the four of us, me, Victoria Price, Lester Carter and Orville Gilley. We were there all night. While Orville Gilley and Lester Carter had stepped off, we asked two negroes when did the freight train going west leave and they said about 11:15. When Lester Carter came back, Victoria told him two Negroes had come down to where we were and said something to us out of the way and Lester Carter took out after the Negroes and had a fuss with some Negroes, I couldn't say who it was. We boarded the freight train going back to Huntsville, Orville Gilley and Lester Carter were with us.

The following is, in substance, the testimony of Lester Carter given at the aforesaid trial of Haywood Patterson in April, 1933, before Honorable Judge James E. Horton:

Back in 1931 I was in a jail at Huntsville serving for time for vagrancy or hoboing. While in jail I met Victoria Price and Jack Tiller who were also in jail. While in jail I met Ruby Bates who

was a visitor at the jail. I served about forty-eight or forty-nine days. Victoria Price introduced me to Ruby Bates. After I got out of jail I saw Victoria Price again, a short time before I left Huntsville. I and Tiller met her late one afternoon as she was coming out of the mill in Huntsville. We went to her mother's home where she lived (Lester Carter then described the home in detail). Jack Tiller introduced me to Victoria's mother as Ma, as a friend from Knoxville, Tennessee. Ruby Bates was not there that night. I was talking to Victoria Price's mother. After a bit Victoria Price and Jack Tiller went into the back room, and after a short bit returned in the room and Jack and I left. The first night we made an appointment for the next night to meet the girls near the mill at seven o'clock. We met them. Jack Tiller and Victoria Price said they knew where we could go and see fun, take a walk for instance. We walked up the railroad yards until we came to the woods, jungles out in the suburbs of Huntsville. That night I had intercourse with Ruby Bates and Jack Tiller with Victoria Price. (The court excluded the testimony of intercourse between Lester Carter and Ruby Bates.) I saw Jack Tiller have intercourse with Victoria Price. The first time was in the jungles around eight or nine o'clock. Then it began to rain and the four of us got into a box car and we had a couple more intercourses with the girls. We stayed there all night. We talked and planned this hobo trip. They said they wanted to go to Chattanooga or some town away from here, that they were sick of the place at the mill, it didn't pay enough wages, and we could go some place and they could "hustle" the town and Jack and I could get a job and work. Victoria Price knew me as Lester Carter. We stayed

in the box car until daybreak then we got out, the girls went to their home and Jack and I went to Jack's home. The following night we four went out for another night and we discussed the plans of the trip. We decided to make the trip by freight train. Victoria Price said it would be alright for her for us three (Victoria Price, Ruby Bates and Lester Carter) to go to some city and as far as Jack Tiller is concerned, we were to drop him a note back and he was to come to our destination where we stopped over. We made a definite appointment to leave Huntsville on the three o'clock train east bound. The following day at about 2:30, I met Ruby Bates and Victoria Price at the railroad yards to catch the freight train out. Jack Tiller was there. When the train pulled in, Victoria Price, Ruby Bates and I boarded the train. The girls were dressed in overalls, ladies' overcoats and hats. We got in a box car, there were a couple of Negroes and several white men in the box car. We rode all the way to Chattanooga in the box car. I spoke very little to Victoria Price and Ruby Bates. We had an arrangement about that. We talked about not noticing one another too much, we might get arrested for hoboing and be caught for crossing the state line. We arrived in Chattanooga about eight o'clock in the evening. Three of us got off the train together and we started walking around looking for some place to sleep for we were all broke and had no money. We met a boy who said his name was Carolina Slim. I found out later his name was Orville Gilley. He asked me for a match to stop me for a conversation. I gave him a match and made him acquainted with Victoria Price. Orville Gilley said he was accustomed to the jungles. We walked up the spur track of the railroad toward the jungles. We arrived in some

woods near a little lake. Gilley made a camp fire out of the jungle wood sticks and Victoria Price and Ruby Bates stayed by the fire while Gilley and I went for supper. We went over on the Rossville Boulevard, and stopped at Nell Booth's Chili Parlor. She gave us food and coffee and some cans to cook our coffee in which we took back to the girls. We returned to the jungles and found tht girls there. We had our lunch and after that Gilley told us railroad stories. We stayed in the jungles until about four o'clock in the morning, pretty near daybreak. Gilley and I left the girls, went back to Rossville Boulevard to bum our breakfast. I could not find any food so I came back to tell the girls Gilley had gone for food and we would wait until Gilley came back. When I got back, the girls had moved from the place where they were supposed to wait for us guys, and I seen them at a distance away down in the jungle with some Negro men sitting on a log by the camp fire. I remained at the railroad until they later spied me and they came back to the railroad. I asked them what they were doing over there with the Negroes and they said they went over there to warm. They said those boys used bad language with them and told me I should go over and whip those Negroes. I went down to those Negroes, there were some of them scattering through the jungles. I went down to one fellow that remained by the fire and asked him what he said to the girls and he said he didn't say anything to them, he said he lived up on the hill and was down there looking for his pigs. I came back to the railroad where the girls were. In a few minutes Gilley came back with some food and we ate the food. Later we went up to the railroad yards to board this train back to Huntsville, Alabama, and later in the morning we boarded the train.

The following, is, in substance, the testimony given by George W. Chamlee, at the aforesaid trial of Haywood Patterson in April, 1933:

> I am a resident of Chattanooga and an attorney for forty years in the State of Tennessee. My office is located on 7th Street at Market and Broad Streets. My office or residence has been on 7th Street twenty-five years out of the last forty years. 7th Street consists of about eight blocks. I do not know all the people living on 7th Street but I know almost everybody there. I have never known any person by the name of Callie Brochie living or having a boarding house there. I have examined the city directories for the years 1930, 1931 and 1932 to see if I could find a Callie Brochie in Chattanooga and I went from one end of 7th Street to the other searching for a Callie Brochie but couldn't find her. I do not believe such a person has lived in Chattanooga for forty years. 7th Street is about a mile and a half from the edge of a hobo jungle on an air line. Going by way of streets and blocks, it is approximately two miles to the center of the jungle and the water tank of the Southern Railroad from 7th and Market Streets. The nearest mill to the jungles, excepting the Champion Mill is about one and one-half miles from the jungle. I have passed by the jungles at night and I have seen fires burning there, camp fires, and white and Negro hoboes.

The following, in substance, is the testimony given by Beatrice Maddox at the aforesaid trial of Haywood Patterson, in April, 1933.

> I live in Chattanooga, Tennessee. I was born there and lived there all my life. I am aquainted with 7th Street in the City of Chattanooga. 7th Street starts at the court house and runs to the other side of Pine Street. It is about eight or nine blocks. I do not know any Mrs. Callie

Brochie that lives on 7th Street or ever has lived on 7th Street. There is no boarding house run by Callie Brochie on 7th Street. I have looked through the city directory of Chattanooga, examined it carefully and there is no mention of Callie Brochie or any boarding house lady by the name of Callie Brochie. I am related to Roy Wright and Andy Wright, two of the defendants.

The following, in substance, is the testimony given by Dallas Ramsey at the aforesaid trial of Haywood Patterson in April, 1933.

About two years ago this month (March, 1931) I remember reading in the papers in Chattanooga about some trouble between some colored boys and white girls down around Scottsboro. I was living right at the railroad in Chattanooga, Tennessee, about three hundred yards from the railroad tracks on Central Avenue. I have lived there nine years in the same house. The tank on the railroad tracks is a short distance from my house. That whole area is known as Hobo Jungle. Lewis also lived in a little shack in Hobo Jungle. The day before I read about the affair in the papers I saw two white girls in the jungles about six o'clock in the morning (Victoria price is brought in for identification). She is the same girl I saw, I recognize her. The night before I saw the girls I saw Lewis. I met him again in the morning at his house. We left his house together and went down to his hog pen about two hundred yards away. Lewis had a sick hog, I saw it. Then Lewis and I came up on the Central of Georgia Trestle. I saw the two girls, one of them was Victoria Price. She asked me when does the train for Huntsville leave. I replied somewhere around nine o'clock. Victoria Price said she came up here hunting a job and I told her they were hiring knitters at the

Champion Hosiery Mill, and she said she had been all around town and could not find a job. That was at six o'clock in the morning. She told me her old man had just left her and gone hunting for food and she was going to hobo back to Huntsville. I told her it was a pretty hard way for a woman to travel. She said they didn't have any money. I seen the girls again a little after that. They was going up toward where the Central and Southern crosses. I saw a man with them. I seen them all catch the train there, two girls and a crew of white and colored boys.

The following, in substance, is the testimony given by E. L. Lewis at the aforesaid trial of Haywood Patterson in April, 1933.

I live in Chattanooga, Tennessee, since 1922. I live in a house near the railroads close to the junction of the Southern Boulevard and Central Railroad of Georgia. I know Dallas Ramsey. I live about three or four hundred yards from him. I own some hogs. I keep them in the woods. On the morning of March 25, 1931 I had an engagement with Dallas Ramsey. He came to my house and he and I went down to see the pigs. I had a sick hog outside the pen. On my way, either going or coming, I saw two women. There was a fire around there. On the night before I saw a fire burn in this woodland about ten o'clock. Victoria Price was dressed in overalls and a long coat. Before that she had been in the woods with some men, white and colored. I saw Victoria Price about four months ago begging food (Victoria Price is brought in and Lewis identifies her). Victoria Price was a frequent visitor to the jungles. When I was returning with Ramsey she asked him when the train left going toward Huntsville, he said about nine o'clock. After I returned from looking about the hogs I seen two

girls sitting on a log between two colored boys. Then they went down to the track of the Central of Georgia and met a white man. Then the young white man came running to me and says what did you do to those girls and I said I haven't said anything to the girls, the girls only asked Ramsey could they get a freight train.

Your deponent was present in court when Honorable Judge W. W. Callahan delivered his charge to the jury at the end of the case of Haywood Patterson, and heard the entire charge delivered. I have read the charge as it appears in the official transcript of said charge at pages 515 to 536, both inclusive. The said transcript shows the said charge as one continuous and broken oration. Your deponent avers that this was not the case. What actually happened was that the court actually ended his charge in the first instance with the words, "Take this case, gentlemen, and give it your consideration", appearing in the official transcript on page 535 at lines 5 and 6. Thereupon it immediately became apparent to counsel for the defense that the court had omitted to charge the jury concerning a possible verdict of not guilty, and the form which said verdict should take should they find the defendant not guilty. Mr. Leibowitz, chief of counsel for the defense, thereupon walked up to the Judge's bench and advised the court of such omission. Thereupon after a consultation between the court, Mr. Leibowitz, and the Honorable Thomas K. Knight, Jr., the court proceeded to charge the jury on a possible finding by the jury of a verdict of not guilty, and the form which said verdict should take. The point at which the court recommenced its charge appears in the official transcript at page 535 at line 6, beginning with the words "Gentlemen of the jury".

Your deponent was also in court during and heard the whole of the summation of Honorable Thomas E. Knight, Attorney General of the State of Alabama, made

before the jury at the end of the Patterson case. That at one point of his summation, the Attorney General said, in effect, "If you cannot avenge the assault of Victoria Price, then you cannot stop the attacks on our womanhood," and further words of a similar nature. Thereupon Mr. Leibowitz, chief of counsel for the defense, moved for a mistrial on the ground that the statements of the Attorney General were an appeal to passion and prejudice. The court overruled this motion. The colloquy occurring around this incident is incompletely reported in the official transcript of the said trial at page 514, lines 8 to 22, both inclusive. Just as Mr. Leibowitz had noted an exception to the denial of his motion (line 14), Attorney General Knight, with obvious excitement, said as closely as I can remember, "Yes, it is an appeal to passion and prejudice." After this there was a momentary silence and then Attorney General Knight continued, "We all have a passion for protecting our womanhood." Then followed the statement of Mr. Leibowitz at line 15 that, "He has repeated a (*the*) statement and we object to it."

In the Brief for Defendants on Constitutional questions submitted with the defendants' motion for a new trial, reference (*is made*) to certain pages of the official record of the original motion to quash the indictment made before Judge Horton in April, 1933, in the cause of the *State of Alabama* v. *Haywood Patterson, et al.*, defendants, because the official transcript of the motion to quash the indictment heard before Honorable Judge W. W. Callahan in November, 1933, did not incorporate these pages of the original motion. At the hearing before Judge Horton, Mr. Chamlee stated that he had excused Judge Mooney from appearing personally with the jury roll because he had promised to produce the book. When it became evident that the jury roll had not been produced, Mr. Leibowitz asked for a subpoena for its production. Mr. Knight objected to this on the ground that the jury roll was immaterial because even if all the

names on it were shown to be white, it would make no difference as the issue was not what names were on the jury roll, but whether the exclusion was due to discrimination. Mr. Knight also stated on that occasion that he himself did not know whether the names of Negroes appeared on the jury roll. In addition to my recollection of what occurred at that time, I have checked these statements with the official transcript before Judge Horton.

In the Norris case an adjournment was granted by the court to the state in order to obtain the testimony of Luther Morris, a witness on behalf of the state, who had failed to appear on a subpoena at the opening of the trial of Clarence Norris. The statements, conversations and other incidents hereinafter referred to, relating to this question of adjournment at the request of the state to procure the appearance of Luther Morris do not appear in the official transcript of the cause of State of Alabama vs. Clarence Norris. I was present in court and heard and witnessed the conversations and incidents hereinafter referred to relating to the said matter of the adjournment and I set them forth as follows:

At 8:30 o'clock in the morning of Saturday, December 2, the court called the case of People of the State of Alabama vs. Clarence Norris and inquired, "what says the state?" Attorney General Knight stated that the state was ready if the witnesses subpoenaed by the state were in court; the court thereupon directed the clerk to call out the names of the witnesses subpoenaed to indicate their presence.

It appeared upon the reading that all of the witnesses were present except one Luther Morris who had previously testified on behalf of the state at the Patterson trial. Thereupon Attorney General Knight stated that the state was ready except for a witness Luther Morris and asked for an adjournment until the following Monday at which time he felt sure said witness would be present in court, to afford an opportunity for such

witness to be brought to court. The court inquired of the defense concerning the motion and Mr. Leibowitz thereupon announced that the defense was ready and that he opposed the adjournment requested by the state.

Mr. Leibowitz stated that in order not to hold up the trial he was willing to stipulate that if the state would proceed the testimony of said Luther Morris taken at the Patterson trial could be read in the Norris case if the state had completed its case and Luther Morris had not appeared. Mr. Leibowitz made it clear that he was offering this stipulation only if the state would agree to it at that time and proceed to trial, but that if the state would not agree to proceed, that he could not offer such stipulation.

Mr. Knight refused to enter into such a stipulation. The court thereupon said, "Let's go on and I will pass on the question of the absence of the witness if need be later since he may arrive during the course of the day."

About 2:30 in the afternoon, the state announced that it had completed its case except that it wanted an adjournment for the purpose of producing the said Luther Morris who had not appeared. The state advised the court that it had heard that the said Luther Morris was ill, although in response to a question from the court, the state said that it had no definite information nor did it offer a doctor's certificate in evidence.

The defense opposed an adjournment; it called to the attention of the court that on the previous Wednesday (the day before Thanksgiving Day, which was a holiday generally observed throughout the courts of the south and the courts of the country), a request for an adjournment applied for by the defense in order to enable Dr. E. E. Reisman of Chattanooga to reach the courthouse towards which he was hastening as speedily as he could from Chattanooga which he had left at twelve o'clock noon, had been denied. That

a further request made by the defense at that time in the Patterson case for an adjournment until the following morning to await the arrival of the deposition of Ruby Bates, a material and important witness for the defense, had likewise been denied although Mr. Leibowitz pointed out that the court had received a telegram that said deposition had been airmailed and that Mr. Leibowitz was willing to stipulate that if the deposition did not arrive in the mail the following day, he would be willing to rest without any further delay.

Thereupon the court admonished Mr. Leibowitz to the effect that what happened in the prior trial had no bearing on this trial, and that as a matter of fact, upon the opening of the Norris case, the state had made known the absence of its witness Luther Morris. Mr. Leibowitz then pointed out that the exact situation applied to the Patterson case, i. e., that at the opening of that case the court was advised that the defense was ready except for the Ruby Bates deposition and stated that it was willing either to await said deposition before starting trial or might be compelled to ask for an adjournment during the course of the trial if the deposition had not yet arrived at the time the defense completed its case. Again the court admonished that what happened at the prior trial could not effect the present situation, and over defendant's objection, adjourned the trial until Monday morning.

ELIAS M. SCHWARZBART.

Sworn to before me this
20th day of February, 1934.

FAY SIEGARTEL,
Notary Public.

A copy of the foregoing affidavit was served on the Attorney General of the State of Alabama by mail on February 20, 1934 and retained by him without objection.

On February 24, 1934 the state filed the following motion in open court:

(Caption)

Comes the State of Alabama, plaintiff in the above styled cause, and moves this Honorable Court to strike the defendant's motion for a new trial or that which purports to be a motion for a new trial and all amendments thereto and for grounds of said motion to strike says as follows:

That this Court no longer has jurisdiction, power or authority over the judgment rendered in this cause on the 6 day of December, 1933. The defendant was tried, convicted and sentenced during the 1933 fall term of the Circuit Court of Morgan County, Alabama which term of Court ended by operation of law on the 23d day of December, 1933. That the defendant did not file any motion for a new trial or in arrest of judgment until after the expiration of said term of court, to-wit on the 29th day of December at which time this Court had lost jurisdiction over said judgment.

Respectfully submitted,

THOMAS E. KNIGHT, Jr.,
Attorney General.

THOS. SEAY LAWSON,
Assistant Attorney General.

On February 24, 1934 the Court granted the State's motion to strike defendant's motion for a new trial and refused to hear the same upon the merits. To this action defendant's counsel excepted.

And the defendant, Clarence Norris, here now tenders the foregoing as his true and lawful Bill of Exceptions, and prays that the same may be signed and certified to the Supreme Court of the State of Alabama, that the errors complained of may be reviewed and corrected; which is accordingly done this, the 2 day of May, 1934.

W. W. CALLAHAN
Judge Circuit Court, Presiding.

I hereby certify that I have this day handed to Wade Wright, of counsel for the State of Alabama, a copy of the foregoing Bill of Exceptions.

Dated, Decatur, March 5th, 1934.

ELIAS M. SCHWARTZBART,
Of Counsel for Defendant.

Presented to me this, the 5th day of March, 1934.

W. W. CALLAHAN
Judge Circuit Court, Presiding.

(Stamped: "Filed in Office this May 2 1934 J. H. Green Clerk.")

Certificate of Appeal.

CLARENCE NORRIS, Appellant,

vs.

STATE OF ALABAMA, Appellee.

I, J. H. GREEN, Clerk of the Circuit Court of Morgan County, Alabama, do hereby certify that in the above styled cause, which was tried and determined in the said Morgan County Circuit Court on December 6, 1933, the defendant was convicted of the offense of rape and his punishment fixed at death by electrocution.

I further certify that on December 6, 1933, defendant was sentenced to death by electrocution and that Friday, February 2, 1934, was set for the execution of such sentence. The defendant on December 6, 1933, gave notice of an appeal to the Supreme Court of Alabama and asked that sentence be suspended pending said appeal, which was granted.

Witness my hand and the seal of said Court, this the 9 day of May, 1934.

Clerk.

Certificate of Transcript.

STATE OF ALABAMA,
MORGAN COUNTY. } CIRCUIT COURT.

I, J. H. GREEN, Clerk of the Circuit Court of Morgan County, Alabama, hereby certify that the foregoing pages numbered one to six hundred seventy-five, both inclusive, contain a true and correct copy of the record and proceedings in a cause pending in said court, wherein the State of Alabama was plaintiff and Clarence Norris was defendant as the same appears on file and of record in my office.

Witness my hand and the seal of said court this the 9 day of May, 1934.

Clerk.

[fol. 676] Decided June 28, 1934

The State of Alabama, Judicial Department

THE SUPREME COURT OF ALABAMA, OCTOBER TERM, 1933-34

8 Div. 582

CLARENCE NORRIS

v.

STATE OF ALABAMA

Appeal from Morgan Circuit Court

GARDNER, J.:

This is defendant's second appeal from a judgment of conviction of rape on the person of one Victoria Price. The first judgment of conviction, in the Circuit Court of Jackson County, where the indictment was preferred, was here affirmed (Weems v. State, 224 Ala. 524), and subsequently reversed by the Supreme Court of the United States (Powell v. Alabama, 287 U. S. 45) upon the theory of inadequate representation by counsel.

[fol. 677] From these authorities, in connection with a consideration of the separate appeals of those jointly indicted with this defendant (Patterson v. State, 224 Ala. 531, Powell v. State, 224 Ala. 540), the interested reader may obtain a more complete history and outline of the salient facts, the reiteration of which is here unnecessary.

Mindful of our duty in cases of this character we have carefully scanned the record for error whether or not pressed upon our attention, with the result that we find all questions of any moment and deserving of separate treatment in our opinion are those forcibly urged by counsel in oral argument and in brief. The discussion here will therefore be confined to those questions, which will be here considered in the order of their presentation in brief.

The first relates to the action of the trial court in overruling defendant's motion to quash the indictment. Defendant is a negro, and insists in his motion that his rights under the Fourteenth Amendment to the Constitution of

the United States have been violated in that persons of the negro race, duly qualified under the laws of Alabama to serve as members of the grand jury that found the indictment against him, were excluded from the list from which said grand jury was drawn, and from the said grand jury solely by reason of their race and color.

[fol. 678] The State joined issue on this motion and denied the averments thereof. The rule applicable appears to have been definitely settled by the Supreme Court of the United States, illustrated by the following brief excerpts from one or two decisions. From Carter v. Texas, 177 U. S. 442, quoted in Rogers v. Alabama, 192 U. S. 226, the following:

"Whenever by any action of a state, whether through its legislature, through its courts, or through its executive or administrative officers, all persons of the African race are excluded, solely because of their race or color, from serving as grand jurors in the criminal prosecution of a person of the African race, the equal protection of the laws is denied to him, contrary to the Fourteenth Amendment of the Constitution of the United States. Strauder v. West Virginia, 100 U. S. 303; Neal v. Delaware, 103 U. S. 370, 397; Gibson v. Mississippi, 162 U. S. 565."

And the burden rests upon the accused to offer proof in support of the motion, or, as expressed in Martin v. Texas, 200 U. S. 316, "the grounds assigned for quashing the indictment should have been sustained by distinct evidence, introduced or offered to be introduced, by the accused."

The Martin case, supra, is also to the effect that the mere fact that no one of the negro race was on the grand jury that returned the indictment does not suffice to show any discrimination, the court saying:

[fol. 679] "A different conclusion in this case would mean that, in a criminal prosecution of a negro for crime, an allegation of discrimination against the African race, because of their race, could be established by simply proving that no one of that race was on the grand jury that returned the indictment or on the petit jury that tried the accused; whereas, a mixed jury, some of which shall be of the same race with the accused, cannot be demanded, as of right, in any case, nor is a jury of that character guaranteed by the Four-

teenth Amendment. What an accused is entitled to demand, under the Constitution of the United States, is that in organizing the grand jury as well as in the empaneling of the petit jury, there shall be no exclusion of his race, and no discrimination against them, because of their race or color. Virginia v. Rives, 100 U. S. 313, 323; In re Wood, 140 U. S. 278, 285. Whether such discrimination was practiced in this case could have been manifested only by proof overcoming the denial on the part of the State of the facts set out in the written motions to quash. The absence of any such proof from the record in this case is fatal to the charge of the accused that his rights under the Fourteenth Amendment were violated."

Other authorities noted are Strauder v. West Virginia, 100 U. S. 303; Virginia v. Rives, 100 U. S. 313; Ex parte Virginia, 100 U. S. 339; Gibson v. Mississippi, 162 U. S. 565; Lee v. State, 163 Md. 56; Bonaparte v. State, 61 So. (Fla.) 633; Lewis v. State, 45 So. (Miss.) 360.

The jury board in this State is composed of three members, and the qualifications for jurors are set out in section 8603, Code, 1923 (see, also, Gen. Acts 1931, p. 56), as follows:

[fol. 680] "The jury commission shall place on the jury roll and in the jury box the names of all male citizens of the county who are generally reputed to be honest and intelligent men, and are esteemed in the community for their integrity, good character and sound judgment, but no person must be selected who is under twenty-one or over sixty-five years of age, or, who is an habitual drunkard, or who, being afflicted with a permanent disease or physical weakness is unfit to discharge the duties of a juror, or who cannot read English, or who has ever been convicted of any offense involving moral turpitude. If a person cannot read English and has all the other qualifications prescribed herein and is a freeholder or householder, his name may be placed on the jury roll and in the jury box."

There can be no objection to this statute, and none is interposed as to its validity. Speaking of a similar statutory provision of the state of South Carolina, the court in Franklin v. South Carolina, 218 U. S. 161, said:

"We do not think there is anything in this provision of the statute having the effect to deny rights secured by the

federal Constitution. It gives to the jury commissioners the right to select electors of good moral character, such as they may deem qualified to serve as jurors, being persons of sound judgment and free from all legal exceptions. There is nothing in this statute which discriminates against individuals on account of race or color or previous condition, or which subjects such person to any other or different treatment than other electors who may be qualified to serve as jurors. The statute simply provides for an exercise of judgment in attempting to secure competent jurors of proper qualifications."

[fol. 681] The argument is directed, therefore, not against the statute but its administration by the jury commissioners as agencies of the state. This becomes of course a matter of proof. Martin v. Texas, 200 U. S. 316.

Both defendant and the State so proceeded, and much evidence was offered on the issue thus framed. Any detail discussion would extend this opinion to undue length, and reference will be made only to salient features of the proof and legal principles applicable thereto.

The total population of Jackson County is 36,881, of which there are 18,801 males. The white population is 34,192, and that of the colored race 2,688. It thus appears at the outset that the negro population form a small percentage of the total population. As to the male population over twenty-one years of age there are 8,801, and of these only 666 are of the negro race. In some parts of the county there are very few negroes at all, as disclosed by the testimony of the witness Stewart, one of the jury commissioners, who stated that south of the river there are "practically no negroes living in there."

And as throwing some light on this phase of the question, though of no material importance, is the further proof that in so large a county as Jackson, there is not a single negro doctor.

[fol. 682] True defendant's proof tends to show that in a long number of years no negro had been called for jury service in that county, and such proof, under the authorities is to be given its due weight. But the question presented is much broader than that, and unless the Court is persuaded from all the evidence there has been a discrimination against the negro on account of his race or color, by

his exclusion from the jury roll on the part of the jury commission for that reason, the motion is not sustained. For the authorities are all to the effect that a member of the colored race, party to a trial involving his life, liberty or property, cannot claim, as a matter of right, that his race shall have a representative on the jury, and that a mixed jury in a particular case, is not within the meaning of the Constitution, necessary to the equal protection of the law. The only right in this respect to which he is entitled, is "that in the selection of jurors to pass upon his life, liberty or property, there shall be no exclusion of his race, and no discrimination against them because of their color."—Neal v. Delaware, 103 U. S. 370.

The proof before the trial judge is ample to sustain the view that these jury commissioners made no exclusion of any negro from the jury roll on account of his race or color, and that in point of fact in the discharge of their duties, it was not so much a matter of exclusion as of selection so as to obtain for that important function of judicial government those best suited for such important service. [fol. 683] These commissioners are under our law vested with a wide discretion (State v. Curtis, 210 Ala. 1), and as stated in Green v. State, 73 Ala. 26, it is the policy of our statute "that grand and petit juries in this State should be a selected class, not an indifferently summoned number from the whole body of electors." And speaking of the statutory qualifications for jurors in substantial respects the same as exist in our present statute, and of the duties of those officials upon whom the selection falls, this Court in the Green case, supra, made these pertinent observations:

"It will be observed that the statute copied above fixes a high standard of qualifications for jurors, grand and petit. They must be selected by certain officers of the county, who are supposed to be, and usually are men of intelligence and good character, and who, being sworn officers, are bound by their official oaths to discharge this duty honestly and impartially. They must be governed by their opinion and judgment; and are equally bound by their oaths to reject persons who, in their opinion, do not possess the requisite qualifications, as to select those who come up to the standard. The qualifications we have said are high. To authorize selection, the person must be a

householder or freeholder in the county, and, in the opinion of the officers performing the service, must be competent to discharge the duties of grand and petit jurors with honesty, impartiality and intelligence, and must be esteemed in the community for his integrity, fair character and sound judgment. These are strong words, and, collectively, constitute an enviable character. In the administration of the law, many householders and freeholders must fall below the standard."

[fol. 684] And coming to still further consideration of the proof in the instant case, it appears that many householders and freeholders did fall below this standard, and this without regard to color or race, for the proof discloses undisputedly that in fact the commissioners in discharge of their duties omitted from the jury roll more white male citizens of the county possessing the proper age qualifications than the entire negro population of the county.

The evidence tended further to show that the jury roll was selected from a list prepared by the clerk of the board composed of the entire male citizens of the county between the ages of twenty-one and sixty-five. There were negroes on the tax list, on the registration or list for voters, and presumably we may add on the telephone directory, all three of which were resorted to by the clerk for the purpose of obtaining these names, in connection with other available sources. The commission called in different reliable parties from various precincts, and questioned them as to the names on the list thus presented for their consideration by the clerk. The testimony is further to the effect that the matter of race, color, politics, religion or fraternal affiliations never entered into their discussion or consideration in selecting those to go upon the jury roll, and they did not know, and, therefore, could not say whether any of the negro race was on the roll or not, as they could not recall the names, and did not personally know all the individuals.

[fol. 685] The proof is further to the effect that the jury commission did not "automatically or systematically exclude anybody," and that the question of race or color was not mentioned, and no one excluded on account thereof.

As emphasized in the case of Green v. State, supra, the qualifications of jurors are high, and many citizens within the proper age must necessarily fall below the mark, and

the exclusion by the commission of so many of the white population gives some indication at least that the commission went about its duty with an honest and sincere purpose to select the best available men for this important service.

The commission was thus in the exercise of official discretion, wide in its scope, and not even to be superseded by that of the trial judge, as held by this Court in State v. Curtis, 210 Ala. 1. Of necessity this discretion must be reposed somewhere, and under our statute the jury commission is given its exercise. Some one of necessity must decide who are to serve. If these officers exercise this discretion unwisely, as said in Green v. State, supra, who can know this or adequately supervise their deliberations? The discussion of this phase of the question by the Mississippi court in Lewis v. State, 45 So. 360, is in harmony with our own decisions, where the court said:

[fol. 686] "This is the guide by which the board of supervisors shall be governed in the selection of those who are to serve as jurors, and it was the object and the purpose of the law to give them wide discretion in the selection of jurors, in order that they might secure persons of good intelligence, sound judgment, and fair character, to the end that there may be nothing but the purest administration of the law. There is nothing in the law which permits them to discriminate and refuse to take a negro on a jury simply because he is a negro; neither are they required to take him on the jury because he is a negro. They are only required to select persons of good moral character, and when, in the exercise of that discretion vested in them by the law, they have done this in an honest purpose to get good men on the jury, irrespective of the race to which they belong, and without discrimination merely on account of race or color, they have exercised a discretion not subject to review by this court, or any other court."

And as observed by this Court in the Green case, supra: "The matter of selection or rejection is left to the opinion (judgment) of the officers charged with the duty. Who is to review this, or pronounce on their motives? If their opinion or judgment is to control them, how can their conduct, in the absence of abuse of their discretion, and fraud, become the subject of review?"

The mere rejection, in their discretion, of a member of the colored race, no more than that of the white race, pre-

sents nothing for judicial review. It is only such rejection because of race or color that gives rise to the discrimination inhibited by the Constitution. There is no evidence here justifying such a conclusion.

[fol. 687] True defendant examined several members of his own race to show these negroes, some farmers, others plasterers, dry-cleaners, porters, janitors, and some in the mercantile business, and others preachers, possessed the necessary qualifications, and were never called to serve on the jury; but a close analysis of this evidence discloses much lack of information on the part of the witnesses upon the question of qualifications for jury service, and is properly to be valued as a mere expression of their opinion concerning the duties of the commission in this regard.

On the other hand, defendant's witness Benson, editor of the local newspaper and evidently widely informed as to the county and its citizenship, and who knew "nearly all" of the negroes there, testified that while he knew some good negroes, with good reputations, yet he would not be willing to say there were any that possessed the necessary qualifications for jury service, and he based his opinion upon the requirement of good judgment. It was his view those he knew lacked that sound judgment that should characterize a juror.

Thus far we have treated the question upon the assumption (though not proven) that in fact the name of no negro appears on the jury roll of Jackson County, and we reach the conclusion that, even so assuming, the evidence fails to sustain the theory that any such omission was on account of race or color. And after all, that is the only inquiry of importance here.

[fol. 688] The cases noted by counsel for defendant, in most part herein cited, have been examined with care, but none of them bear analogy to the facts presented in the instant case, and the foregoing conclusion is reached upon an application of the law clearly stated in these decisions to the evidence adduced.

We have not overlooked defendant's insistence that the names of six or more negroes now appearing on the jury roll were fraudulently placed there. But this charge in no manner involves any member of this jury board, as defendant insists this was done after this board went out of office and relinquished all control over the books. We

gather from the proof that the charge of fraud, if any was committed, was, by implication at least, laid at the door of the clerk of the board, who testified before the trial judge together with the handwriting expert. The trial court was not persuaded the charge of fraud in this regard had been sufficiently sustained. But, concluding as we do, that the ruling of the court below was fully justified by the proof, irrespective of this question, a consideration of that phase of the matter is here wholly immaterial, and we pass it by without any expression of opinion thereon.

[fol. 689] The insistence that the court deprived defendant of the opportunity to prove the matter of discrimination, is wholly refuted by the record.

Numerous witnesses were examined by defendant as well as by the State, and the whole question, so far as can be judged from this record, was heard with patience and due care. The last witness examined by defendant was the handwriting expert. On the day before this witness was examined, defendant had completed the examination of all his witnesses present, and requested that the hearing be not closed until the expert from New York arrived. The court granted the request, and adjourned court until the following morning, when the expert appeared, and the court ordered a recess, even at that time "for from one to two hours for the witness to examine the record." When the expert witness had concluded, the defendant then asked for further continuance to procure other witnesses. This was a matter addressing itself to the wise discretion of the trial judge, and his action thereon will not be here reviewed in the absence of any abuse thereof. Bell v. State, 227 Ala. 254, 149 So. 687; Jarvis v. State, 220 Ala. 501.

As to the absent witnesses who had been subpoenaed, the record discloses they were not present when the case was called, and the court offered to have attachments issued, if so desired, but attachments were not requested, nor, indeed, did defendant desire attachments at this time, but merely a delay of the trial that their presence might in some way be otherwise procured. Manifestly such character of procedure would prove a hindrance to the prompt and orderly administration of the law. This insistence is wholly lacking in merit, and needs no further treatment.

[fol. 690] Counsel evidently were entirely familiar with the case in all its phases, and there was no surprise. Clearly

no abuse of discretion here appears, but, on the contrary, a patient and full hearing had. The case of Martin v. Texas, 200 U. S. 316, cited by defendant, bears no analogy.

Upon the ruling on the motion to strike the trial venire, little need be said. In the discussion of the motion to quash the indictment, the applicable law has been stated and the authorities cited. Each rests upon a consideration of an issue of fact (Thomas v. Texas, 212 U. S. 278), and, as approvingly quoted in this latter authority, "If they (the jury commission) fairly and honestly endeavored to discharge their duty, and did not in fact discriminate against the negro race in the selection of the jury lists, then the Constitution of the United States has not been violated.

As in Jackson County, there was conflict in the evidence as to whether or not there were men of the proper age of the colored race suitable and competent for jury service, though the percentage of the colored population is some larger in Morgan than in Jackson County.

Defendant's proof in large part relates to the absence from jury service of members of the colored race for a long number of years, and the opinion evidence of several members of the race giving a list of names of colored men in the county whom they consider posssess the necessary qualifications for such service, and who have never been called for that purpose.

It may be here interpolated, that as to doctors and preachers, some of whom gave evidence upon this question, the proof is without dispute that the jury commission, in view of the right of their exemption by statute, omitted all of these classes entirely from the jury list.

[fol. 691] J. A. Tidwell was a member of the jury board that prepared the jury roll from which this venire was taken. He states that the commission selected the jury roll from a list of all the male citizens of the county between twenty-one and sixty-five years of age, irrespective of race or color. Inquiry was made among various citizens, including some of the colored race, and neither race nor color was considered by the board in making up this roll. The witness was shown the lists of names offered by defendant's witnesses as possessing proper qualifications, and stated that to the best of his recollection the board considered the names of the persons on those lists, sitting officially in their deliberations.

The testimony of the two other members of the board consisted of their affidavits, and were to the effect that the jury roll was selected by them from a list of every male citizen of Morgan County between twenty-one and sixty-five years of age, and that from this they selected those persons who, in their opinion, possessed the prescribed qualifications, and excluded none on account of race or color. The commissioners further state they do not know definitely whether the names of any colored citizens appears on the jury roll or not, in as much as it was impossible to know each one personally.

We have previously observed the high standard of qualification for jury service. Deeply embedded in our judicial system is the right of trial by jury. However imperative it may be that the judges be learned in the law and capable of its proper interpretation in their instructions to the [fol. 692] jury, yet, after all, it is the jury that holds in its hand the life, liberty and property of the citizens. Their's may well be denominated a sacred trust, and the importance of calling for such high service men of intelligence, character and sound judgment cannot be too greatly stressed. The discretion as to the composition of the jury roll must be vested in some one, and in this State our statute has imposed this duty upon three jury commissioners appointed by the Governor. Presumably these officers faithfully discharge their duty.

To prove the contrary defendant offers evidence that for a long number of years negroes have not served on the jury, and the opinion evidence of witnesses of that race that a named list of negroes are competent for that purpose. This may present a conflict of opinion as to the proper persons to serve, but clearly such proof cannot suffice to overturn the testimony of these commissioners that they considered neither the question of race nor color, but acted conscientiously in the discharge of their duty to get the best available material for that purpose. Doubtless (nothing appearing in the record to the contrary) as in the Jackson County matter, a large number of white men were also omitted from the rolls. This would not, however, show discrimination, but selection only, and the exercise by the commissioners of their discretion. The discrimination, to avail defendant, must be on account of race or color.

[fol. 693] If the members of the jury commission are to be believed, no such discrimination was shown. On the con-

trary, it is emphatically disproved. These officers are clearly without personal interest in this case, and we find nothing in this record to justify the conclusion they have deliberately testified falsely. And that conclusion must be reached if defendant's contention is to prevail.

The case from the Maryland court of Lee v. State, supra, as well as other authorities cited by defendant, bear no analogy to the instant case upon the facts presented. But further discussion need not be indulged.

We are of the opinion the proof clearly shows, to paraphrase the quoted expression in Thomas v. Texas, 212 U. S. 278, that these commissioners did fairly and honestly endeavor to discharge their duty, and did not in fact discriminate against the negro race in the selection of the jury list, and that no provision of the federal Constitution has been infringed.

The motion to quash the trial venire was therefore properly denied.

The hearing of this motion was upon evidence had on a former trial, and seems to have been full and complete. The testimony of J. A. Tidwell was in that manner offered in evidence, but the trial judge was of the opinion the witness should have been permitted to answer a question on cross-examination that was denied on the former hearing. To this end, the witness was re-called and the question asked and answered. The record discloses that this was after the completion of the evidence on the motion and that the court stated that was all defendant had requested. Any further [fol. 694] questioning, under these circumstances, was a matter resting in the wise discretion of the court, and in the exercise of which we see no abuse. There is nothing in the record to justify any charge that defendant was denied opportunity to prove his motion. Full opportunity was accorded.

As previously noted, defendant was formerly tried and convicted in Jackson County, and upon a reversal of the judgment when the cause was again called for trial a motion for change of venue was presented. The motion was granted, and the trial moved to Morgan County. Upon the call in Morgan County, defendant again moved for a change of venue.

While our statute (section 5581, Code, 1923) contemplates but one change of venue, yet the State made no resort to the

statute, and the trial judge rested his ruling on the merits. We treat the question in like manner, and irrespective of the statute.

We concur in the observations of the trial judge, that the motion is embellished with irrelevant matter, but in the main it rests as to proof upon the affidavits of employed investigators as to what a number of citizens stated as their view of the case. Numerous counter affidavits were offered by the State, and a number of these charged to have been interviewed, denied any such conversation. Significant, however, is the further proof, offered by the State, to the effect that at least five of those charged to have been so interviewed [fol. 695] had been dead sometime before the alleged conversation. As observed by the learned trial judge, this established fact "strikes at the very vitals of the credence to be given such an affidavit." The burden rested upon defendant to show to the reasonable satisfaction of the court that an impartial and unbiased verdict could not reasonably have been expected in that county.—Henry v. State, 215 Ala. 635; Owens v. State, 215 Ala. 42; Powell v. State, 224 Ala. 540; Patterson v. State, 224 Ala. 531.

Without further discussion, we rest content with the statement of our conclusion that upon consideration of the conflicting proof, we are not persuaded there was any error in the denial of the motion for a change of venue.

Defendant excepted to the ruling of the court on a challenge for cause relating to jurors Humphrey, Sivley and Watson. Our decisions relative to such questions are reviewed in the recent case of Peterson v. State, 227 Ala. 361, 150 So. 156, and the governing principles need no reiteration here, further than to note that much weight is to be given to the conclusion of the trial judge who sees and hears the prospective juror, and the reviewing court should exercise caution, and not set aside the finding of the trial court unless it affirmatively appears, that on the answers of the jurors, taken as a whole, he entertained a fixed opinion which would bias his verdict.

[fol. 696] The examination of the three above named prospective jurors, of which counsel in brief complain, appears on pages 499 to 510 of the record. As to Humphrey no reason whatever appears for any challenge for cause, and as to Watson and Sivley the answers of these jurors to the questions propounded by the court fully jus-

tified their acceptance. We find nothing in the record that would justify the disturbance of the ruling of the court in this regard.

In large part the argument as to any prejudicial conduct on the part of the trial judge is directed to a companion case (both being embraced in a single brief), rather than to this. As to this particular record we rest content with the observation that the argument upon the question is so lacking in support of the record that we feel no necessity exists for a discussion thereof. The cases cited (Griffin v. State, 90 Ala. 596; Moulton v. State, 199 Ala. 411; Burns v. State, 226 Ala. 117; Daggett v. Boomer, 210 Ala. 673) are not analogous.

True the trial judge interposed an occasional question, which, of course, is entirely proper, and may have on one or two occasions manifested slight impatience, but we are not in an advantageous position to judge the matter of provocation. All considered, the trial appears to have been conducted with proper regard to all administrative rules, as well as due regard for defendant's rights, and we find nothing in the conduct of the trial judge to merit any condemnation here.

[fol. 697] No question of consent for sexual intercourse on the part of the prosecutrix was here involved. No such defense was interposed, but, on the contrary, defendant's proof was to the effect that no assault whatever was committed on the person of the prosecutrix, and, in fact, no such crime, as testified to by her occurred.

The rule here prevailing is stated in Patterson v. State, 224 Ala. 531, as follows: "Previous chastity is not an essential element of the offense charged in the indictment, and, where this is so, rape may be committed on an unchaste woman, or even a common prostitute," and reiterated in Powell v. State, 224 Ala. 540.

Defendant insists, however, that notwithstanding the established rule, it was permissible for defendant to ask of the prosecutrix as to her conviction of any offense involving moral turpitude by way of impeachment of the witness, and as affecting her credibility. And it may be conceded that the crime of adultery is one involving moral turpitude. Sexton v. State, 48 Tex. Cr. 497; Morrison v. State, 85 Tex. Cr. 20. See, also, Pippin v. State, 197 Ala.

613; Ex parte Marshall, 207 Ala. 566; Moore v. State, 12 Ala. App. 243, 67 So. 789.

It is therefore insisted reversible error was committed in sustaining the State's objection to the question propounded by defendant on cross-examination of the prosecutrix: "Were you ever convicted of the crime of adultery?" The answer to the argument is that under our decisions the question is too broad, and does not embrace the appropri- [fol. 698] ate predicate. This for the reason that the decisions here are uniform to the effect that our statute (section 7722, Code, 1923) relating to the competency and credibility of witnesses as affected by conviction for crime, contemplates only convictions for violation of the State laws, and not convictions for violations of municipal ordinances. Gillman v. State, 165 Ala. 135; Cheatham v. State, 59 Ala. 40; Burns v. Campbell, 71 Ala. 271; Williams v. State, 144 Ala. 14; Swope v. State, 4 Ala. App. 83; Wilson v. Vassar, 214 Ala. 435.

In Wilson v. Vassar, supra, it was distinctly held that the defendant should have indicated by his question whether or not the inquiry concerned the conviction for the violation of a State statute, the Court saying:

"The defendant asked him on cross-examination, and the court sustained objection to the question, 'Have you ever been arrested in the city court and paid a fine for either buying or receiving or concealing stolen property?' It appears this city court of Bessemer was the mayor's court, and by the question defendant was inquiring as to the conviction of the witness of violating ordinances and not as to the conviction of the witness for violating state statutes on the subject mentioned. The defendant did not clearly indicate by his question, as he should have done, that he was inquiring if the witness had been convicted of violating the state statute on the mentioned subject, and the trial court will not be placed in error for sustaining the objection to the question, because this court in Gillman v. State [165 Ala. 135] 51 So. 722, in construing section 4008 of the Code of 1907, which is the same as section 7722, Code of 1923, wrote:

[fol. 699] " 'Section 4008 of the Code, relating to the competency and credibility of witnesses as affected by conviction for crime, contemplates only convictions for violations

of the State laws, and not convictions for violations of municipal ordinances.—Cheatham v. State, 59 Ala. 40."

"See, also, Burns v. Campbell, 71 Ala. 273."

The case of Williams v. State, supra, is also authority to the effect that the question was subject to the objection on account of its generality. There the question was: "Were you ever convicted of a crime in the City Court of Montgomery?" The holding was that the statute had reference only to crimes that were infamous, and the objection to the question properly sustained by reason of the fact that it was too general, saying: "Irrelevant and illegal evidence would have been responsive to it, and where this is true of a question an objection may be properly sustained to it." Like reasoning is applicable here.

The violation of a State law must have been involved, and a conviction otherwise would be illegal and irrelevant. Therefore irrelevant and illegal evidence would have been responsive to the question. It was too general and subject to objection. And it is the rule of our decisions that "a general objection may be properly sustained if the testimony is obnoxious to any rule of evidence whatever."—L. & N. R. R. Co. v. Fleming, 194 Ala. 51, 69 So. 125. To like effect is the holding in Feore v. Trammel, 213 Ala. 293, 104 So. 808, reviewing the ruling of the trial court sustaining a general objection to a question, where the [fol. 700] Court said: "The objection was general, and on appeal the ruling must be sustained, if there was any good reason whatever why the testimony sought by the question should have been excluded." More recent cases recognizing and giving application to this same rule are Mobile & Ohio R. R. Co. v. Watson, 199 Ala. 585, 130 So. 199; Carter v. State, 226 Ala. 96, 145 So. 815; Morgan-Hill Paving Co. v. Pratt City Savs. Bank, 220 Ala. 683, 127 So. 500.

These authorities and the reasoning applicable to this question apply with equal clearness to other questions of similar, though even more general character, and they need no separate treatment. Indeed, all of these questions, including the one herein treated, give indication that this character of questioning was merely in the nature of a "fishing expedition," with nothing in the record to indicat any foundation in fact therefor.—Flowers v. Graves,

220 Ala. 445, 125 So. 659; Morgan Hill Paving Co. v. Pratt City Savings Bank, 220 Ala. 683, 127 So. 500 (502).

But in any event, and this matter aside, under the cited decisions, the ruling of the court is here due to be sustained. The argument, therefore, for reversible error as to these rulings is without merit.

As previously observed, there was no question of consent here involved.

Objections of the State to questions seeking to show adulterous relations on the part of the prosecutrix with certain [fol. 701] named individuals the night before the commission of the alleged crime, or even the night before leaving Huntsville, were properly sustained. All of this bore no relevancy to any issue in the case under the rule firmly established in this jurisdiction.—Story v. State, 178 Ala. 98; Weems v. State, 224 Ala. 524. Nor is there anything in this record, argued as existing in the companion case of Patterson v. State, which, upon any theory, would render this evidence admissible.

Some other questions to prosecutrix on cross-examination were disallowed. They related to her movements in Chattanooga, whom she saw, to whom she spoke, and where she spent the night, or closely related matters, all of which it does not appear, would be relevant to the charge of rape here considered. Though not to be too narowly restricted (Mitchell v. Birmingham News, 223 Ala. 568; Pearce v. State, 226 Ala. 436), yet the extent of cross-examination is a matter resting largely in the discretion of the trial court (Doss v. State, 224 Ala. 90; Peterson v. State, 227 Ala. 361, 150 So. 156; Alabama Power Co. v. Berry, 222 Ala. 20), and we find no abuse of that discretion in the instant case.

The oral charge of the court appears to be full and comprehensive. Some few exceptions were reserved. Whether the exceptions were sufficiently definite under the rule or merely descriptive (Buckley v. State, 19 Ala. App. 508), we need not stop to inquire, as considered upon their merits they present no reversible error.

[fol. 702] One of the exceptions argued, is to the statement that "the mere presence renders one guilty as well as he who committed the crime," and we are cited to Raiford v. State, 59 Ala. 106; State, ex rel. v. Tally, 102 Ala. 25; Morris v. State, 146 Ala. 66. The difficulty with coun-

sel, however, is not as to the law, so well understood, but with the fact that the exception lacks support in the record. The court in the oral charge had made no such statement, and was guilty of no such error. In brief we are referred to page 639 of the record (evidently meaning page 629) as to the language forming the basis of the exception. Perhaps a sufficient answer thereto is the following from the court's oral charge found on page 629:

"Now, gentlemen, there are some other principles of law on which it is necessary for me to instruct you, in order for you to apply it in the consideration of the contentions of the parties. One is what is called the law of aiding and abetting. It is not necessary for me to undertake to give you the legal, technical definition of these words, but I can tell you in general terms what it means. It means this: that all parties who intentionally assist, encourage, or participate in the commission of a crime are just as guilty as if they had committed the crime themselves. To illustrate: If some party comes to you and tells you that he wants to break into a store in this town and wants to borrow your tools with which to break in, and you lend them to him for that purpose, and he breaks into that store with the tools, you are a burglar, and you are just as guilty of breaking into that store as if you had been there by yourself and had done it by yourself. That is true of any other crime. And further, and more on that subject. If you stand by while a crime is being committed by another or others, and you stand by for the purpose of giving aid, or encouragement by your presence, and that purpose is known to the party or parties committing the offense, and your mere presence does encourage him, and the act is done, then, gentlemen, you are an aider and abettor, and you are just as guilty as the party that committed the act."

[fol. 703] Further treatment of this exception we consider unnecessary. Nor was there merit in the remaining argued exception relating to impeachment of a witness's character. The court was merely pointing out that this form of character impeachment is by witnesses who testify thereto, and not to particular acts or conduct. This was followed by instructions as to contradiction of a witness which may go to the question of his credibility. In respect to the exception reserved, the court stated he did not instruct the jury

they must disregard the testimony of any witness for wilful false testimony, but that they may do so.

Counsel made oral request at the close of the oral charge that the jury be instructed in certain aspects, not here necessary to note. This for the reason the practice here observed admits of no such oral requests. If further instructions are desired, it is the duty of the party so desiring them to submit requested charges in writing. Such is our statute (section 9509, Code, 1923), and our decisions interpreting the same. McPherson v. State, 198 Ala. 5; Peterson v. State, supra.

It was the theory of the defendant (though he did not offer himself as a witness) that in fact no assault or rape occurred on the occasion of which prosecutrix complains. The State offered proof of the assault by defendant, and evidence tending to show that he and those with whom he was jointly indicted, acted in concert, aiding and abetting one another in the commission of the offense. Under these [fol. 704] circumstances, the statement of defendant to the deputy sheriff that the "rest of the boys" committed the rape, but he did not, was admissible, and no error was committed in this regard. Fincher v. State, 211 Ala. 388; Bridley v. State, 193 Ala. 43.

The judgment of conviction against this defendant was on December 6, 1933. The term of the court expired December 23, 1933. Defendant filed a motion for a new trial on January 2, 1934. It came too late.

In the companion case of Patterson v. State, this day decided, this question is fully discussed with the citation of apt authorities, and needs no further treatment here. The question is one of jurisdiction, and the motion was properly stricken. Patterson v. State, supra; Morris v. Corona Coal Co., 215 Ala. 47.

We may add; however, that the only question presented in the motion and not herein already considered, relates to the question of the weight of the evidence. And we think, with due propriety it may be further added that the evidence has been read with care, and, had the question been directly presented, we do not consider the case one justifying a disturbance here of the ruling of the trial court in denying the motion. Cobb v. Malone, 92 Ala. 630.

The several rulings of the court below have been duly examined, with the result we find no error to reverse.

Let the judgment, therefore, stand affirmed.
Affirmed.
All the Justices concur.

[fol. 705] Filed in Office of Clerk, Supreme Court April 11, 1934

SUPREME COURT OF THE STATE OF ALABAMA

8th Div. 581 and 582

STATE OF ALABAMA, Prosecutor

against

HAYWOOD PATTERSON, Defendant

STATE OF ALABAMA, Prosecutor

against

CLARENCE NORRIS, Defendant

On reading and filing the petition of Joseph R. Brodsky, duly verified April 7, 1934, and sufficient cause appearing therefor, it is hereby

Ordered that the Clerk of the Morgan County Circuit Court send up to this Court for its inspection and consideration in connection with the transcripts herein the two books consisting of the jury roll of Jackson County which are in evidence in these cases.

Dated Montgomery, Alabama, May 4, 1934.

(Signed) John C. Anderson, Chief Justice of the Supreme Court of the State of Alabama, for the Court.

[fol. 706] SUPREME COURT OF THE STATE OF ALABAMA

STATE OF ALABAMA, Prosecutor,

against

HAYWOOD PATTERSON, Defendant

STATE OF ALABAMA, Prosecutor,

against

CLARENCE NORRIS, Defendant

To the Supreme Court of Alabama:

The petition of Joseph R. Brodsky respectfully alleges as follows:

1. Your petitioner is one of the attorneys for the above named defendants who were tried separately before Honorable W. W. Callahan and a jury in Morgan County and have been convicted of the crime of rape and sentenced to death.

2. In each case an identical motion was made to quash the indictments rendered by the grand jury of Jackson County against these defendants on the ground that the indictments were in violation of the rights of defendants under the Fourteenth Amendment of the United States Constitution in that defendants were Negroes and that Negroes had been systematically excluded from the jury roll of Jackson County [fol. 707] and that such exclusion was due to their race.

3. In support of this motion proof was offered by the defendants to show that in fact there were no Negroes on the jury roll from which was selected the grand jury which found the indictments in question. As part of such proof the jury rolls of Jackson County were produced in Court and offered in evidence.

4. Upon the hearing of the motion it appeared that the names of Six Negroes were on such jury rolls. A question arose, however, whether such names had been placed on the jury rolls prior to or subsequent to the finding of the indictments. Defendants proved by unimpeached and uncontradicted expert testimony that the names of these six Negroes had been written over certain red lines appearing

immediately thereunder. These red lines were concededly written on the books subsequent to the finding of the indictments when a new jury board took possession of the books. The Court nevertheless refused to find that the names of the Negroes had been placed upon the rolls subsequent to the bringing in of the indictments and denied the motions to quash the indictments.

5. These jury books were at the request of defendants' counsel impounded with the Clerk of the Morgan County Circuit Court and are, to the best of my information and belief, still in his possession.

6. It is important to the consideration of the appeal of the defendants that these jury rolls, which consist of two bound books, be produced before this Court so that the members of this Court may personally be able to examine the [fol. 708] same. In my opinion the case of the defendants would be seriously prejudiced if such jury rolls were not before the Court at the time of the argument and consideration of these cases.

7. It is impracticable to attach or incorporate these books in the transcript or to furnish the Court with any summary or photograph of the same. An examination of the actual writing itself is essential.

Wherefore your petitioner respectfully asks that this Court direct the Clerk of the Circuit Court of Morgan County to send up for the inspection and consideration of this Court in connection with the transcripts herein the two books consisting of the jury roll of Jackson County which are in evidence in these cases.

Dated, New York, April 7th, 1934.

(Signed) Joseph R. Brodsky, Petitioner.

STATE OF NEW YORK,
County of New York, ss:

Joseph R. Brodsky makes oath in due form of law that he is one of the attorneys for the defendants herein and is the petitioner herein. The facts as stated in the foregoing petition are true to the best of his knowledge and belief.

(Signed) Joseph R. Brodsky.

Subscribed and sworn to before me, this 7th day of April, 1934. (Signed) Charles H. Levitt, Notary Public, New York County. N. Y. Co. Clks. No. 119, Reg. No. 5L221. Kings Co. Clks. No. 45, Reg. No. 5223. Bronx Co. Clks. No. 32, Reg. No. 119L35. Commission expires March 30, 1935.

[fol. 709] THE SUPREME COURT

Friday May 4th, 1934.

The Court met pursuant to adjournment.

Present: All the Justices.

It is ordered on motion of the appellants that the Clerk of the Circuit Court of Morgan County, Alabama be directed to forward to this Court for inspection, the two books consisting of the jury rolls of Jackson County introduced in evidence in the trials of the cases of Haywood Patterson vs. The State of Alabama and Clarence Norris vs. The State of Alabama in the Circuit Court of Morgan County, Alabama and now on appeal to this Court from the Circuit Court of Morgan County, Alabama.

[fol. 710] SUPREME COURT

Friday, May 25, 1934.

The Court met pursuant to adjournment.

Present: All the Justices.

MORGAN CIRCUIT COURT

8th Div. 582

CLARENCE NORRIS, Alias, &c,.

vs.

THE STATE OF ALABAMA

Come the parties by attorneys, and argue and submit this cause for decision.

[fol. 711] SUPREME COURT

Thursday, June 28, 1934.

The Court met pursuant to adjournment.
Present: All the Justices.

MORGAN CIRCUIT COURT

8th Div. 582

CLARENCE NORRIS

vs.

THE STATE OF ALABAMA

Come the parties by attorneys, and the record and matters therein assigned for errors being argued and submitted, and duly examined and understood by the Court, it is considered that in the record and proceedings of the Circuit Court there is no error.

It is therefore considered that the judgment of the Circuit Court be in all things affirmed.

The time fixed by the judgment and sentence of the Circuit Court for the execution of the prisoner, Clarence Norris, having expired pending this appeal, it is ordered that the Sheriff of Morgan County deliver the defendant, Clarence Norris to the Warden of Kilby Prison at Montgomery, Alabama, and that the said Warden of Kilby Prison at Montgomery, Alabama execute the judgment and sentence of the law on Friday, the 31st day of August, 1934, before the hour of sunrise, on said day in said prison, by causing a current of electricity of sufficient intensity to cause death to pass through the body of the said Clarence Norris until he is dead, and in so doing he will follow the rules prescribed by the Statutes.

It is also considered that the appellant pay the costs of appeal of this Court and of the Circuit Court.

[fol. 712] Filed in Office of Clerk, Supreme Court, July 9, 1934

The State of Alabama, Judicial Department

THE SUPREME COURT OF ALABAMA, OCTOBER TERM, 1933-34

8 Div. 582

CLARENCE NORRIS

v.

STATE OF ALABAMA

Appeal from Morgan Circuit Court

PETITION FOR STAY OF EXECUTION

To the Honorable Chief Justice and Associate Justices of the Supreme Court for the State of Alabama:

Petitioner, Clarence Norris, respectfully represents that on June 28, 1934, this Court announced its affirmance of the judgment of the Circuit Court of Morgan County of Alabama imposing the death penalty upon this petitioner and in its judgment fixed August 31, 1934, as the date of execution. Your petitioner has filed a petition for a re-hearing in this Court. In view of the fact that this Court is now in recess it may be that said petition may not have been decided by this Court prior to the date now set for the execution of said judgment. Moreover, your petitioner intends to apply to the Supreme Court of the United States for a writ of certiorari to review the decision of this Court in the event that said application for re-hearing is denied. Said Court is also in recess and will not re-convene until the early part of October 1934. It will, therefore, be impossible for your petitioner to have had his application passed upon by said Court prior to the date now fixed for such execution.

[fol. 713] In connection with the application to the Supreme Court of the United States numerous steps will have to be taken including the certification by the Clerk of this Court of the proceedings had before this Court and the printing of the transcript furnished by the Clerk of this

Court by the Government printing office all of which must be complete before the writ of certiorari and the brief in support thereof can be prepared because of the necessity for proper references therein. Moreover, said brief and petition will have to be printed.

The grounds upon which the Supreme Court of the United States will be asked to review this Court are as follows:

(a) That defendant's motion to quash the indictment was improperly denied because the defendant being a Negro unlawful discrimination was practiced against members of his race by excluding them from the jury roll from which was drawn the grand jury which found the indictment against him.

(b) That defendant's motion to quash the venire was improperly denied because the defendant being a Negro unlawful discrimination was practiced against members of his race by excluding them from the jury roll from which was drawn the petit jury which found him guilty.

Your petitioner respectfully submits to this Court that a stay is necessary in order to give your petitioner an adequate opportunity to make application for certiorari by the Supreme Court of the United States and to give that Court an opportunity to pass upon such application. He [fol. 714] respectfully prays that an order be made by this Court providing for a stay of execution such that your petitioner in the event that this Court denies his application for a re-hearing will have ample time after such denial to cause to be prepared the necessary papers for submission to the Supreme Court of the United States in connection with such application for certiorari and that the Supreme Court may have an opportunity of passing upon such application for writ of certiorari. In the judgment of your petitioner's counsel such stay should extend at least sixty days beyond the decision of this Court on the application for a re-hearing and in any event extend at least to November 1, 1934, all of which is respectfully submitted.

Clarence Norris, by (Signed) Osmond K. Fraenkel,
Attorney.

STATE OF NEW YORK,
County of New York, ss:

Duly sworn to before me this 3rd day of July, 1934. (Signed) Charles H. Levitt, Notary Public, New York County. N. Y. Co. Clks. No. 119, Reg. No. 5L221. Kings Co. Clks. No. 45, Reg. No. 5223. Bronx Co. Clks. No. 32, Reg. No. 119L35. Commission expires March 30, 1935.

[fol. 715] I hereby certify that I have served a copy of this petition for stay of execution by mailing a true copy thereof in a securely fastened post-paid envelope addressed to Hon. Thomas E. Knight, Jr., Attorney General of the State of Alabama, representing appellee herein, to his office in Montgomery, Alabama, on the 6th day of July, 1934.

(Signed) Osmond K. Fraenkel, Attorney for Appellant.

[fol. 716] Filed in Office of Clerk, Supreme Court, July 9, 1934

The State of Alabama, Judicial Department

THE SUPREME COURT OF ALABAMA, OCTOBER TERM, 1933-34

8 Div. 582

CLARENCE NORRIS

v.

STATE OF ALABAMA

Appeal from Morgan Circuit Court

APPLICATION FOR RE-HEARING

Comes the appellant, Clarence Norris, and hereby makes application for a re-hearing of said cause and moves the Court to set aside the judgment of affirmance rendered in this cause and to grant him a new trial, and that said cause be reversed and remanded to the Circuit Court of Morgan

County for the causes and reasons hereinafter assigned in this application.

Dated, New York, July 3, 1934.

Samuel S. Leibowitz, Joseph R. Brodsky, George W. Chamlee, Osmond K. Fraenkel, Attorneys for Appellant.

[fol. 717] The State of Alabama, Judicial Department

THE SUPREME COURT OF ALABAMA, OCTOBER TERM, 1933-34

8 Div. 582

CLARENCE NORRIS

v.

STATE OF ALABAMA

Appeal from Morgan Circuit Court

Now comes the appellant, Clarence Norris, in the above cause and presents this his application for a re-hearing therein and prays the Court to set aside and vacate the judgment and opinion of affirmance rendered in said cause and to enter a judgment in favor of appellant reversing and remanding said cause and in support of his application for a re-hearing presents the following petition with brief and argument in support thereof:

I

The Court erred in affirming the denial of the appellant's motion to quash the indictment on the ground that unlawful discrimination was practiced by the officials of Jackson County in the selection of the jury roll from which was drawn the grand jury which indicted him in violation of the Fourteenth Amendment to the Constitution of the United States in that appellant was deprived of the equal protection of the laws.

II

The Court erred in affirming the denial of the appellant's motion to quash the trial venire on the ground that unlawful discrimination was practiced by the officials of Morgan

County in the selection of the jury roll from which was drawn the petit jury which tried appellant in violation of the Fourteenth Amendment to the Constitution of the United States in that appellant was deprived of the equal protection of the laws.

[fol. 718] III

The Court erred in affirming the judgment of conviction herein and overruling the exceptions taken by appellant to the examination of the prospective jurors; in holding proper and harmless the interruptions and comments of the Trial Court; in approving the exclusion of the question directed to Victoria Price inquiring as to her conviction for adultery; in approving the exclusion of relevant and material testimony offered by the defense and in approving the charge to the jury, as well as in upholding the action of the Trial Court in striking appellant's motion for a new trial.

Dated New York, July 3, 1934.

Samuel S. Leibowitz, Joseph R. Brodsky, George W. Chamlee, (Signed) Osmond K. Fraenkel, Attorneys for Appellant.

I hereby certify that I have served a copy of this petition for re-hearing, together with the brief attached thereto, by mailing a true copy thereof in a securely fastened postpaid envelope addressed to Hon. Thomas E. Knight, Jr., Attorney General for the State of Alabama, representing appellee herein, to his office in Montgomery, Alabama, on the 6th day of July, 1934.

(Signed) Osmond K. Fraenkel, Attorney for Appellant.

[fol. 719] The Supreme Court, Thursday, October 4th, 1934

The Supreme Court met pursuant to adjournment.

Present: All the Justices.

MORGAN CIRCUIT COURT
8th Div. 582

CLARENCE NORRIS

vs.

THE STATE OF ALABAMA

Application for rehearing having been filed in this cause on the 9th day of July, 1934, and each and every ground of

the petition being duly examined and understood by the Court, it is considered and ordered that each and all grounds of the petition for rehearing be and the same are hereby overruled; and the said application for rehearing be and the same is hereby overruled.

The time fixed by the judgment of affirmance and sentence of this Court rendered June 28, 1934, for the execution of the prisoner, Clarence Norris having expired pending the determination of the application for rehearing in this cause, and the said application for rehearing being overruled, it is now ordered that Friday, the 7th day of December, 1934, be fixed as the date for the execution of the prisoner, Clarence Norris.

It is therefore ordered that the Sheriff of Morgan County deliver the prisoner, Clarence Norris to the Warden of Kilby Prison at Montgomery, Alabama, and that the said Warden of Kilby Prison at Montgomery, Alabama, execute the judgment and sentence of the law on Friday, the 7th day of December, 1934, before the hour of sunrise, on said day, in said prison, by causing a current of electricity of sufficient intensity to cause death, to pass through the body of the said Clarence Norris until he is dead, and in so doing he will follow the rules prescribed by the statutes.

It is also considered that the appellant pay the costs of appeal of this Court and of the Circuit Court.

[fol. 720] IN THE SUPREME COURT OF ALABAMA

CLARENCE NORRIS, Appellant,

against

STATE OF ALABAMA

PRÆCIPE FOR TRANSCRIPT OF RECORD

To Robert F. Ligon, Esq., Clerk of the above entitled Court:

You are hereby required to make a transcript of the record of this cause to be used on an application to the Supreme Court of the United States for a writ of certiorari in said cause, the transcript to consist of:

1. The record of appeal in said cause, a copy of which we submit herewith.

2. The opinion of the Supreme Court of the State of Alabama, a copy of which we submit herewith.

3. All journal entries contained in the record of the proceedings of the Supreme Court of the State of Alabama relating to said cause.

4. The petition for a re-hearing, a copy of which we submit herewith.

5. The final judgment and decision of the Supreme Court of the State of Alabama, together with any opinion which may have been rendered on the application for re-hearing.

6. A copy of this præcipe, which is submitted herewith.

7. Your certification to the record that it is a complete record in said cause.

Dated New York, October 4, 1934.

Osmond K. Fraenkel, Attorney for Appellant.

[fol. 721] The State of Alabama, Judicial Department

THE SUPREME COURT OF ALABAMA, OCTOBER TERM, 1934-35

Eighth Division 582

CLARENCE NORRIS

vs.

THE STATE OF ALABAMA

Appeal from Morgan Circuit Court

THE STATE OF ALABAMA,
City and County of Montgomery:

I, Robert F. Ligon, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages numbered from 1 to 720, inclusive, contain a full, true and correct copy of the record and proceedings, and of the opinion of said Supreme Court in the above stated cause, as the same appear and remain of record and on file in this office.

Witness, Robert F. Ligon, Clerk of the Supreme Court of Alabama, at the Capitol, in the City of Montgomery, this the 9th day of October, 1934.

Robert F. Ligon, Clerk of the Supreme Court of Alabama. (Seal of the Supreme Court of Alabama.)

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed January 7, 1935

The petition herein for a writ of certiorari to the Supreme Court of the State of Alabama is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

NOV 17

Supreme Court of the United States.

OCTOBER TERM, 1934.

No. 534

CLARENCE NORRIS,

Petitioner,

against

STATE OF ALABAMA.

PETITION AND BRIEF IN SUPPORT OF APPLICATION FOR CERTIORARI.

WALTER H. POLLAK,
OSMOND K. FRAENKEL,
Attorneys for Petitioner.

GALLO & ACKERMAN, Inc., 142 Liberty Street, Telephone—Rector 2-8356-7

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Supreme Court of the United States

OCTOBER TERM, 1934.

CLARENCE NORRIS,

Petitioner,

VS.

STATE OF ALABAMA.

PETITION FOR WRIT OF CERTIORARI.

TO THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, Clarence Norris, respectfully alleges:

A.

Summary statement of the matter involved.

Petitioner is now confined in Kilby Prison in the City of Montgomery, State of Alabama, under sentence of death for the alleged crime of rape. His execution is set for February 8, 1935. He was convicted at a trial held in Morgan County, Alabama, before Judge Callahan and a jury. An appeal was taken from that conviction to the Supreme Court of Alabama, which is the highest court of the State of Alabama. The conviction was affirmed by that Court on June 28, 1934. A timely application was made on July 9, 1934 for a rehearing, which application was received and considered by the Court. The application for a rehearing was denied on October 4, 1934.

At the outset of the case petitioner moved to quash the indictment on the ground that the grand jury which brought in the indictment in Jackson County had been drawn from jury rolls from which negroes had been excluded because of race or color. Petitioner also moved to quash the venire of the petit jury in Morgan County where the action had been brought on for trial on the ground that negroes had been excluded because of race or color from jury service in that county. The Court refused to permit petitioner to introduce evidence which petitioner deemed necessary to support the claim of exclusion.

B.

Reasons relied on for the allowance of the writ.

1. Petitioner was denied the equal protection of the laws guaranteed to him by the Fourteenth Amendment of the Constitution of the United States in that negroes were excluded from jury service in Jackson County, Alabama, in which county was found the indictment against him, and that such exclusion was by reason of their color.

A motion was made by your petitioner before the commencement of the trial to quash the indictment on these grounds. The motion was entertained and evidence introduced in support thereof which established such discrimination. The claim of federal right was considered both by the trial court and by the Supreme Court of the state.

2. Petitioner was denied the equal protection of the laws guaranteed to him by the Fourteenth Amendment of the Constitution of the United States in that negroes were excluded from jury service in Morgan County, Alabama, the county in which the case was tried, and that such exclusion was by reason of their color.

A motion was made by your petitioner before the commencement of the trial to quash the venire on these grounds. The motion was entertained and evidence introduced in support thereof which established such discrimination. The claim of federal right was considered both by the trial court and by the Supreme Court of the state.

3. Your petitioner was on numerous occasions, both with reference to the motion to quash the indictment and with reference to motions to quash the venire, deprived of an opportunity of offering material proof in support of his contention that discrimination had been practiced.

In support of the foregoing grounds of application your petitioner submits the accompanying brief setting forth in detail the precise facts and arguments applicable thereto.

WHEREFORE your petitioner prays that this Court, pursuant to United States Judicial Code, Section 237 b, as amended by Act of February 13, 1925, 43 Statutes 973, issue a writ of certiorari to review the judgment of the Supreme Court of the State of Alabama affirming your petitioner's conviction for rape, as aforesaid.

All of which is herewith respectfully submitted this 17th day of November, 1934.

CLARENCE NORRIS, Petitioner,
By WALTER H. POLLAK,
OSMOND K. FRAENKEL,
Attorneys.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1934.

CLARENCE NORRIS,

Petitioner,

against

STATE OF ALABAMA.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

Opinion of the Court below.

The opinion has not yet been reported officially. It appears in 156 So. 556 and at pages 676-695 of the record.* An application for rehearing was denied without opinion (705-706).

II.

Jurisdiction.

1.

The statutory provision is Judicial Code, § 237b as amended by Act of February 13, 1925, 43 Stat. 937.

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*All references are to the Norris record except where we specifically refer to the companion record in the Patterson case. Because of the somewhat confused condition of the record, an index to it is printed in the Appendix to this brief.

2.

The date of the judgment is June 28, 1934 on which date the Alabama Supreme Court affirmed (699). A petition for rehearing was filed on July 9, 1934 (702). The application was denied on October 4, 1934 (704-705).

3.

That the nature of the case and the rulings below bring the case within the jurisdictional provisions of § 237b, *supra*, appears from the following:

The claim of federal constitutional rights is specifically made in the motion to quash the indictment (49) and the motion to quash the venire (424). The questions were expressly considered and the rights ruled against by the trial court (163, 495). Exceptions were noted to each ruling (167, 497). The questions were specifically passed upon by the Alabama Supreme Court in its opinion (676-684, 685, 689).

The claims so made and denied are that the systematic exclusion of negroes because of race or color for service on grand and petit juries in Jackson County where the grand jury was drawn (48-49) and in Morgan County where the petit jury was drawn (423-424) was in violation of the Constitution and laws of the United States. Incidental to these claims is the further contention that the Court erred in excluding further evidence offered by petitioner to prove discrimination and exclusion (see *infra*, pp. 25-28).

4.

The following cases among others sustain the jurisdiction:

Strauder v. *West Virginia*, 100 U. S. 303, 309; *Neal* v. *Delaware*, 103 U. S. 370, 397 and *Rogers* v. *Alabama*, 192 U. S. 226, 231, establish that the exclusion of negroes from grand and petit juries solely on the ground of their race

or color is in violation of the Constitution. *Carter* v. *Texas*, 177 U. S. 442, 448, 449, holds that the refusal to give the defendant a full opportunity to prove his claim of discrimination is a denial of the federal constitutional rights. *Beidler* v. *Tax Commission*, 282 U. S. 1, 8; *Fiske* v. *Kansas*, 274 U. S. 380, 385-6; *Creswill* v. *Knights of Pythias*, 225 U. S. 246, 261 and *Ancient Egyptian Order* v. *Michaux*, 279 U. S. 737, 745, decide that where a federal right has been asserted and denied, it is the province of this Court to ascertain whether the conclusion of the state court has adequate support in the evidence.

III.

Statement of the case.

Petitioner is one of nine negro boys charged with raping two white girls, Victoria Price and Ruby Bates, on a freight train proceeding through Alabama.

As to one of the boys, a mistrial was declared. The other eight were found guilty and sentenced to death after a trial at Scottsboro during April, 1931.

The Supreme Court of Alabama reversed the conviction as to one of the boys and affirmed as to seven, including this defendant (*Weems, et al.*, v. *State*, 224 Ala. 524) and the defendant Patterson (*Patterson* v. *State*, 224 Ala. 531; see also *Powell, et al.*, v. *State*, 224 Ala. 540). These judgments were subsequently reversed by this Court (*Powell, et al.*, v. *Alabama*, 287 U. S. 45). Thereafter by order filed March 20, 1933, the venue was changed from Jackson to Morgan County (6).

Patterson, one of the seven, was subsequently brought to trial before Judge Horton in Morgan County and was convicted. The verdict of conviction was set aside. The opinion of Judge Horton is printed in the Appendix to the brief on the Patterson application for certiorari.

*The motion to quash the indictment.**

When the Patterson case came up for trial for the third time—this time before Judge Callahan—the motion was made on behalf of the seven defendants (50) to quash the indictment because of exclusion of negroes from juries in *Jackson* County. The motion had theretofore been made before Judge Horton, but since he set aside the conviction, his rulings never became subject to review. Part of the evidence before Judge Horton was read into the record before Judge Callahan (89-148) and this, in addition to new testimony before Judge Callahan (57-88, 149-61), constitutes the record on the motion to quash. Judge Callahan denied the motion with an opinion (163-167). Exception was taken to the denial of the motion (167).

*The motion to quash the venire.**

On November 21, 1933 Patterson moved to quash the trial venire (418-425) on the ground of exclusion of negroes from the juries in *Morgan* County. That motion was likewise denied by Judge Callahan with an opinion (495-498). Again the record includes evidence taken before Judge Horton (429-491) and new matter introduced before Judge Callahan (491-494). Exception was taken to the denial of the motion to quash the venire (497).

Patterson was brought to trial for the third time and was found guilty on December 1, 1933 (Patterson, 19). Norris was tried for the second time and found guilty on December 6, 1933 (22). Both defendants were on December 6th sentenced to death. (A continuance has been granted to the other five negroes and they have not yet been tried. The cases of the two juveniles have been sent to the Probate Court for consideration.)

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*By stipulation the proceedings in the Patterson case on the motion to quash the indictment and to quash the venire are made applicable to the defendant Norris (42a), and accordingly the motions, testimony and rulings are set forth in full in the present record (43-167, 418-498).

Appeals were taken to the Supreme Court of Alabama (Patterson R., 786, Norris R., 674).* After affirmance by the Court an application for a rehearing was made (702) and denied (705) as stated above.

The facts concerning the exclusion of negroes from jury service are discussed *infra* (pp. 10-24).

IV.

Errors below relied upon here. Summary of argument.

The points we urge are in summary form as follows:

1. The indictment of a member of the negro race and his conviction by juries from which negroes are systematically excluded is a denial of the equal protection of the law.

2. The Court denied petitioner's constitutional rights in refusing to quash the indictment by the grand jury in Jackson County where negroes had for years been excluded from jury service.

3. The Court denied petitioner's constitutional rights in refusing to quash the venire of the petit jury in Morgan County where negroes had for years been excluded from jury service.

4. The Court denied petitioner's constitutional rights in refusing to permit the petitioner full opportunity to prove that negroes were systematically excluded.

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*Before the appeal to the Supreme Court motions for a new trial were made in each case (Patterson R., 24, Norris R., 23). Upon application by the State each motion was stricken on the ground that it was made after the term. Applications for a rehearing were made pointing out that the trial court with the knowledge of the Attorney General of Alabama had extended the time of the defendants to make their motions beyond the term, and that the defendants relied on the court's statement that their time to make the motion extended to dates which were subsequently decided to have been beyond the date of the expiration of the term. (33-35). The matter has no relevancy to the petitioner Norris's application for certiorari except as bearing upon the attitude in this case of the court and of the officers charged with the administration of justice in Alabama. Because of its possible relevance, however, to the Patterson application it is discussed in the Patterson brief.

POINT I.

The indictment of members of the negro race and their conviction by juries from which negroes are systematically excluded is a denial of the equal protection of the law.

The principle applies whether the action is by virtue of a statute (*Strauder* v. *W. Va.*, 100 U. S. 303, 309; *Bush* v. *Kentucky*, 107 U. S. 110, 122) or by the action of the administrative officers (*Neal* v. *Delaware*, 103 U. S. 370, 397; *Carter* v. *Texas*, 177 U. S. 442; *Rogers* v. *Alabama*, 192 U. S. 226, 229; *Martin* v. *Texas*, 200 U. S. 316, 319), and whether the exclusion is from service on petit juries (*Strauder* v. *W. Va.*, *supra*, at pp. 304-309; *Neal* v. *Delaware*, *supra*, at p. 396), or grand juries (*Carter* v. *Texas*, *supra*, at p. 444; *Rogers* v. *Alabama*, *supra*, at p. 229).

In Alabama, the statute (Code, §8603, Appendix, p. 30) does not in terms provide for the exclusion, but the evidence discloses an exclusion or discrimination by administrative officials as uniform as if provided for by statute.

The Alabama Supreme Court, while recognizing the principles referred to (678, 679), failed, as we shall show, to apply them to the facts of this case, and by reason of such failure it denied petitioner his constitutional rights.

POINT II.

The court denied petitioner's constitutional rights in refusing to quash the indictment by the grand jury in Jackson County where negroes had for years been excluded from jury service.

Proof of Exclusion.

A. The population of Jackson County in 1930 was 36,881 (89). The male population over 21 was 8,801, of which 666 were negroes (92).

B. That there was actual exclusion, that white men served on juries in Jackson County, and that negroes did not and had not for upwards of fifty years, is established and uncontradicted. No negro was called on this grand jury (61). No negro had served on any grand or petit jury in Jackson County in the memory of any man, and men white and colored testified,—men who had lived in Jackson County all their lives, many of them over fifty years of age (119, 127, 137, 140, 144, 145, 146). No negro was ever called for jury duty in the memory of men who had lived forty to fifty years in the county (135, 119). The testimony of the negroes was confirmed by the following white officials:

Two jury commissioners (58, 78); the clerk of the Circuit Court (60); the clerk of the jury commission (69); the court reporter for the Ninth Judicial Circuit (76).

A 76-year old negro testified:

> "It is a matter of custom in Jackson County that no negro can sit on a jury, that has been a custom for sixty years" (147).*

*Compare the statement in the charge of the trial court referred to in *Roberson* v. *State*, 18 Ala. App. 634, in the case of a white man indicted for the killing of a negro:

(*Footnote continued on next page.*)

Further, except for six names shown, *infra*, by irrefutable evidence to have been forgeries, no negro's name appeared on any jury roll from which grand and petit juries alike (61) were drawn.

C. This evidence, uncontradicted and undisputed, presents, without more, a *prima facie* case of denial of equal protection (*Neal* v. *Delaware*, supra, 103 U. S., at p. 397). But the evidence does not rest here.

D. That there were qualified negroes in the county is beyond debate. The qualifications for jurors are stated in the Alabama Code, § 8603 (Appendix, p. 30). Witnesses testified by name to at least 37 negroes who they said had these qualifications. Included in these names were negroes who were members of school boards of colored schools appointed by the white Superintendent of Education (126-127); trustees of colored schools who had been elected by the negroes who were qualified voters (127-128-129-133); property owners and householders (128, 129). Negroes from the county had sat on the Federal jury (119, 120). The trial court assumed that negroes in the county were qualified for jury duty (164). Indeed Judge Callahan rested his refusal to quash the indictment solely on the ground—mistaken as we shall show—that names of negroes appeared on the jury roll.

E. The Supreme Court, while it did not hold that there were no negroes in the county fit for jury duty, expressed

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(*Footnote continued from previous page.*)

> "Now, gentlemen, there has been an effort to inject into this case race prejudice. The colored man is in this country, and he has been deprived in a large measure of the right to vote, *he has been deprived entirely of the right to sit on the juries of this country*, and the enforcement of the laws of this country is in the hands of the white people, and it should be enforced with equal justice and equal right to the white man and the colored man alike" (pp. 635-6).

It should be stated that this case did not come up from Jackson County. Compare also *Rogers* v. *Alabama*, 192 U. S. 226.

some doubt upon this point (683), especially referring to the testimony of Benson, the editor of the local newspaper. Benson had said that while he knew "some good negroes, with good reputations" he "would not be willing to say that there were any that possessed the necessary qualifications for jury service;" that "those he knew lacked that sound judgment that should characterize a juror" (683).

Fifty years ago, this Court dismissed a like general conclusion of negroes' unfitness for jury service—uttered not by a witness but by the Chief Justice of the court of last resort of the state—as a "violent assumption" (*Neal* v. *Delaware, supra,* 103 U. S., at p. 397).*

And an examination of Benson's testimony confirms that his conclusions are based solely upon his prejudice against negroes and his attitude of superiority.

Apart from this, however, the evidence showed that many negroes were qualified, and although Benson purported to testify that some were not qualified, neither he nor anyone else testified that every one of the negroes named was unqualified. The testimony that there were negroes qualified for jury duty in Jackson County, therefore, remains undisputed and under the law every one of these should have been selected (Code, §8606, Appendix, p. 30).

Attempts to explain or justify the exclusion.

We have already called attention to the inconsistent positions taken by the Trial and the Supreme Court. Judge Callahan, as we have seen, held that there were qualified negroes in Jackson County—that negroes appeared on the

*What the Delaware Chief Justice had said was:

> "'that none but white men were selected is in nowise remarkable in view of the fact—too notorious to be ignored—that the great body of black men residing in this State are utterly unqualified by want of intelligence, experience or moral integrity to sit on juries'" (103 U. S., at pp. 393-4).

jury rolls. The Supreme Court, on the other hand, expressed doubts whether there were any qualified negroes and refused to pass on the question whether the names of negroes appeared on the rolls. We examine separately the explanations accepted by each court.

The explanation accepted by the Trial Court.

Judge Callahan rested his denial upon the ground that the names of negroes appeared upon the jury roll. A brief recital of the facts concerning the make-up of the jury roll will facilitate an understanding of the evidence.

The commissioners who prepared the rolls from which the grand jury was drawn consisted of Stewart, who testified, Winn, who did not testify, and Jenkins, who was present in court but did not testify (69). Kelly Morgan, the clerk of this commission, also testified (69). The Stewart Commission went out of office in March, 1931 when the new jury commission was appointed (57). The new commission made up a new list which is only incidentally here involved. The making up of the jury roll is in three stages: (1) Names were obtained by the clerk—the voting list, a list from the tax books and "probably" a telephone directory (75). (2) From these a temporary list was made up. The clerk testified that this temporary list contained male citizens of the county without regard to race or color (75). He testified (75) that it contained all male citizens, but on the same page said he did not know whether this was the case. (3) From the temporary list prepared by the clerk, the commission directed what names were to go on the roll. The clerk thereupon posted these names on the roll* and on the cards that went into the jury box (70). From the box are drawn both grand and petit jurors (61).

The important point in this process is the method by which the names on the list get on the jury roll. The list

*The original books constituting the jury rolls in question will be handed up to the Court in connection with this application.

contains the names of persons both "qualified and unqualified" (110). The commission then calls in men from the different precincts of the county and they check the names of men in their precinct "where they are supposed to know all of these parties" (110). As the commissioner put it: "*We take those people's word for it,* the men who come in, the law gives us that right" (109).

There is no testimony what principles these men who were called in applied; there is no testimony that they were sworn or performed any official duty; there is nothing to show that they did anything more than continue the age long process of exclusion.

Judge Callahan rested his decision that negro names appeared upon the rolls on two grounds: (a) that there had been "emphatic", "positive" testimony before Judge Horton that there had been negroes on the roll (164); (b) that the defendants themselves had pointed out by their witnesses that there were several negro names on the jury roll. On these two bases his decision rests,—each without foundation:

(a) Not only was there no emphatic or positive testimony to this effect before Judge Horton, there was nothing from which the defense might have drawn the inference that the state would ever claim that negroes appeared on the jury. The only possible testimony to which Judge Callahan might have referred was that of Commissioner Stewart. If his testimony is carefully read it becomes apparent that when he was talking about negroes being on lists he was talking not of the permanent jury roll but of the preliminary lists from which it was drawn (109-111). He was unable to give the name of any negro whose name might be on the jury roll (111). Finally, when asked before Judge Callahan "whether or not names of colored persons were on the jury roll", he answered, "No, sir, I don't know whether there is or not" (84).

(b) We have disposed of the "positive" testimony, the "emphatic" testimony relied upon by Judge Callahan. We

now turn to the six names which he contends witnesses called by the defense showed were on the jury rolls.

The State in the hearing before Judge Horton made no attempt to show that the names of any negroes appeared on the rolls. Indeed, the State threw obstacles in the way of obtaining the rolls, the Attorney General objecting before Judge Horton to their production (668, 669).

When the rolls were finally produced before Judge Callahan, the defense asked several white officials to examine them and point out the names of colored people. The rolls were gone through, page by page, and six names were found. They are as follows:

Precinct	No.	1	Mark Taylor	(64)
"	"	3	Cam Rudder	(65)
"	"	10	K. D. Snodgrass	(60)
"	"	14	Pleas Larkin	(67)
"	"	21	Travis Moseley	(67)
"	"	21	Hugh Sanford	(62)

If it be assumed that these six entries in a list of many thousands were genuine, they would not be sufficient to rebut the evidence of a half century of exclusion.

But the inescapable fact is that these names were not on the old jury rolls while they were current, but were written in after those rolls had become obsolete and a new jury commission had been drawn. This is the inevitable conclusion from the following undisputed facts:

1. The rolls from which the Grand Jury were selected that brought the indictment in this case were those prepared by the Stewart Commission (57, 58, 78). The Stewart Commission went out and the new commissioners came in in March, 1931 (57). The new commissioners were required to empty the jury box and to make up a new list (65).

2. As a preliminary the new commissioner Moody directed the new clerk J. D. Snodgrass, Jr., to draw lines after the old names (63). The lines were drawn by the new clerk.* Except for the lines drawn in blue ink under letter A and letter B names in precinct 1, the lines drawn were all red lines (63). Whatever the new clerk wrote in the book was below these red lines (63). The old jury names were above the red lines—"It is the names above the red lines that constituted the jury roll from which this Grand Jury was drawn" (57). The red lines, it is undisputed, were drawn by the clerk of the new commission in the presence of Mr. Moody (63), although Moody did not see him draw all of the red lines throughout the book (66).

3. The clerk of the old commission (Morgan) testified that he had not put in the red lines; that when he finished with those books there were no red lines that he knew of (74).

4. The only names on the jury roll that were testified to as being the names of negroes—the six above referred to—appeared in each instance immediately above the red lines. And no negro's name appears in any other position.

5. An expert examiner of questioned documents of distinguished reputation (149) testified that the ink used in writing each one of these names (152-161) is superimposed upon the red lines and therefore must have been written after the red lines were drawn. The expert was not cross examined. His testimony is uncontradicted.

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*Moody testified that it was customary when drawing these lines to leave a line blank after the names which had been written by the old board (64-65). The books show that except in a few instances this was generally done. Opportunity, therefore, existed for the insertion of names above the red lines so that it might appear that they had formed a part of the old jury roll.

The conclusion is inescapable that the books were tampered with and that the six names all appearing in the same position were written in after the new jury commission came in and after the red lines drawn there to distinguish the old jury list from the new had been placed in the book.* Judge Callahan admitted that the matter was suspicious and that he would have been in grave doubt (165) had it not been for the following reasons, which, however, cannot in any sense support his conclusion.

a) Judge Callahan refers (164) to the fact that the witness "right at the beginning of his testimony" mentioned a date, presumably 3/20/31 (154), as written under the red line, but dates written under the red lines are of no significance and especially irrelevant is it whether the new clerk may have written the date on which the new jury commission took office before drawing the red line or after drawing the red line. The relevant fact is that every negro name supposed to have been on the old jury rolls was superimposed upon the red lines and that the red lines were drawn after the new commissioners came in.

b) Judge Callahan refers also (166) to an entry dated in March, 1929, which he said appeared to be *under* the red lines. The record shows no such entry. But in any event the significance of the argument is difficult to grasp. A forgery is shown only when an entry purporting to be part of the old jury roll is written *over* lines that were drawn after the new jury commission came into office.

c) Finally, Judge Callahan thought that he would not be authorized to presume that someone committed a crime

*This Court can see this fact for itself from an examination of the original books. The expert also called attention to the difference between the kind of ink used in writing these six names and that used in writing the other names (153-159).

or to cast a reflection on the officers whose duty it was to keep the books (166-167). But whatever may be the implications the fact is that the evidence is uncontradicted and unexplained that names were written into an old jury roll after new commissioners came in.

The Supreme Court expressly declined to pass on the question whether the names were "fraudulently placed there" (683). They said: "This charge in no manner involves any member of this jury board" (683). The Supreme Court having rested their decision upon other grounds held that a consideration of this matter is "wholly immaterial, and we pass it by without any expression of opinion thereon" (684).

The explanations accepted by the Alabama Supreme Court.

The grounds upon which the Supreme Court based their denial of the motion to quash likewise find no real support in the evidence:

(1) They say that more white male citizens of proper age qualification were excluded than negroes (681). But this is no answer to the contention that *no* negro was ever called to serve and that *no* negro name appeared on the jury rolls. Especially is this the case in a community where under the statute *all* qualified males were required to be placed on the jury rolls (Code, § 8606, Appendix, p. 30).

(2) They indicate doubts whether there were any qualified negroes (683). But they do not state this as a finding or suggest that the evidence would warrant any such finding. And as we have seen, *supra*, such a finding would not be supported by the evidence.

(3) They rest their judgment on the testimony of the commissioner which they state was to the effect that the

matter of race or color "never entered into their discussion or consideration in selecting those to go upon the jury roll, and they did not know, and, therefore, could not say whether any of the negro race was on the roll or not" (681) and further, that the jury commission did not "automatically or systematically exclude anybody" and that the question of race or color was not mentioned and no one excluded on account thereof (681).

There are to be sure, general statements in the record to that effect. Commissioner Stewart testified that they never discussed race or color (84, 111, 112, 113, 115), that "we didn't automatically or systematically exclude anybody" (85). But the detailed testimony gives no facts to support the conclusion that there was no discrimination. The commissioners presented temporary lists to various unidentified persons in the different precincts and had them check off from those lists the names deemed by them to be qualified. The commissioners took the selection of these unknown persons.* Consequently the selection was made by those persons. There is nothing to indicate that they did not intentionally exclude negroes. The presumption of discrimination from the continued exclusion of negroes has, therefore, in no way been overcome since the actual selectors did not testify. The bare protestations of Stewart are without meaning in these circumstances.

The general statement that race or color was not discussed must be considered in connection with testimony overlooked by the Supreme Court that on the lists, before the rolls were finally made up, there appeared after the

*The Supreme Court in discussing this phase of the case misread the record. They refer to the commission as "calling in people from different precincts" and "questioning them" (681). The evidence is that the unnamed persons made the actual selection, "they checked off the names of the qualified jurors" (109). The commission took "their word for it" (109). There is not the slightest evidence that they were in any way questioned by the commission.

names of colored people the word "col." (109).* It was not necessary for any one to discuss race or color. Exclusion, under these circumstances, could be perfect without a single word being spoken.

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Finally, the matter of discrimination is put beyond question by the testimony of the commissioner himself. The lists contained the names of negroes. The rolls, on the other hand except for the spurious six, contained the names of none. Negroes were, therefore, rejected either because they were not qualified or arbitrarily. We have seen that there is a total absence of evidence of any witness who testified, except in general terms, to the exclusion of negroes because they lacked qualifications. What was not commented on by either the lower or higher Alabama Court was that the commissioner himself, in a series of questions, specifically denied that he had ever excluded any negro because of his age, because he was not a person esteemed in the community, because he was lacking in judgment or had a disease affecting his mentality, or had been convicted of a crime involving moral turpitude, or because, not being able to read he was not a freeholder or householder (112); that he had never had occasion to exclude any negro by reason of any of the disqualifying provisions (113).

Clearly, there can be no basis for the assumption that the exclusion of negroes in Jackson County rested on any principle other than race.

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*The commissioner himself testified not that he did not know whether he was passing on negroes or whites, but that "he didn't know them all" (113-114).

POINT III.

The court denied petitioner's constitutional rights in refusing to quash the venire of the petit jury in Morgan County where negroes had for years been excluded from jury service.

1) Nearly twenty per cent. of the population of Morgan County in 1930 was colored (478)*,—37,865 whites, 8,311 colored.

2) Intelligent witnesses (431, 437, 439, 447, 452, 456, 459, 461, 467, 468) named nearly 200 negroes who they said complied with the qualifications necessary for jury duty. The names included college graduates (431, 437, 456, 459, 465), physicians (468), dentists (431, 465), preachers (451, 453), business men (453), real estate owners (465, 470), a notary public designated by the governor as of good moral character (454), teachers (449, 453), a school principal licensed by the State of Alabama after an investigation as to mentality, academic qualifications and moral standing and "certified as the type of person to teach the citizens of Alabama" (456), Masons (458, 467) and members of other lodges (467, 469), war veterans (445, 461), a first lieutenant in the World War (467). Many were voters (431, 437, 439, 452, 465).** Some had been summoned for duty on federal juries (455, 437).

Dr. N. M. Sykes, a colored physician of standing (468, 469) with the commission of a lieutenant in the medical corps of the United States Army (470) testified that there were many others that could be added to the lists of negroes

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*The U. S. census figures show that the percentage of colored to white persons in this county was even higher from 1890 to 1920, running to nearly 25%.

**The defense was not permitted to show that before a colored man was allowed to vote, he was examined as to his qualifications and required not only to recite sections of the Constitution but to interpret them (432, 438, 439-441, 465).

qualified for jury service (453). The defense counsel stated that he was prepared to furnish proof from about 400 competent, reputable witnesses to substantiate the allegations of the petition pertaining to the qualifications of negroes in Morgan County (472), but the Court limited him to two additional witnesses (464) holding that the evidence was cumulative (473).

The Trial Court implied (495-496) that there was no doubt of the existence of qualified negro jurors in Morgan County. It had indeed excluded further evidence to show the existence of qualified negroes as "cumulative" (473). The Supreme Court, on the other hand, said there was a conflict of evidence (685).

The only testimony that even squints in this direction is the testimony of the Jury Commissioner Tidwell, but he did not testify that there were no negroes in Morgan County who were qualified for jury service, merely that he *knew* of no negroes so qualified (484). He did not pretend to know all the negroes in Morgan County and the record names many of those testified to as qualified whom he admitted he did not know (483, 487).

3) We have, then, a colored community consisting of one-fifth of the population of the county, among whom are many individuals concededly qualified for jury duty. No negro in the memory of men fifty years of age and over had ever served on a jury (434, 441, 442, 448, 452, 453, 457, 459, 463, 464, 466, 469, 470) or ever been called for jury duty (434, 437, 441, 442, 448, 452, 457, 459, 462, 466, 469). The testimony is uncontradicted. Even the white clerk Green, who had called about 2,500 jurors, stated that not one of them was of the colored race (429). A resident of Morgan County for about thirty years, he did not remember ever seeing a single colored person serve on the jury (430).

There is no showing that negroes were unwilling to serve. On the contrary, such evidence as there is, is that they were willing (452, 470).

4) The State made no attempt to show that there were any negro names on the jury roll.

The witnesses for the state questioned by the defense on cross examination were unable to point out any negro names (475, 477). The Court refused to permit the defense to inquire into prior jury rolls (476).*

To overcome evidence so potent there must be a convincing factual showing that the exclusion was not based upon race or color,—a factual demonstration that there was a conscientious attempt to weigh the qualifications of negroes for jury duty. Generalities—conclusions by the officials that there was no exclusion—are of no avail against the stark fact of exclusion continued for half a century (*Lee* v. *Maryland*, 163 Md. 56, 66; *Bonaparte* v. *State*, 65 Fla. 287, 291**; compare *Estes* v. *Commonwealth*, 229 Ky. 617, 619, 620).

The attempts to explain or justify the exclusion.

Both courts (496, 686) relied upon the presumption that the officials performed their duty and upon the unsupported statements by the officials themselves that they never distinguished between white and colored,—that they never discriminated (497, 686).

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*And yet the Trial Court pointed out that if the exclusion ran over a long period of years, it might be sufficient to show an illegal discrimination (496).

**In the Bonaparte case the Court said:

> "It would be beyond the ken of the judicial or any other mind to appreciate how a deputy sheriff in a county containing more negroes than whites could through a series of eight years in selecting jurors for all the courts of the county abstain from selecting a single negro for jury service during all those years, and then come up afterwards and truthfully testify that he had not discriminated against the negro race in the selection of a panel of jurors all of whom still belonged to the white race" (p. 291).

In both the *Lee* and the *Bonaparte* cases the court of last resort of the state reversed convictions on the precise ground of the exclusion of negroes.

The Supreme Court of Alabama referred to *Thomas* v. *Texas* (212 U. S. 278) to justify its conclusion that the facts of the case at bar showed no discrimination by the commissioners, but rather an honest exercise of judgment. However, the court disregarded the fact that in *Thomas* v. *Texas* this court sustained the action of the state officials because a negro was on the grand jury which brought the indictment and negroes were on the venire from which the trial jury was drawn (212 U. S., at p. 283).*

The opinions stress that the jury commissioners talked with various persons. But what information they got is not disclosed. Whether they talked with colored persons is uncertain. The one commissioner who testified** leaves it in doubt (475, 482, 483). He said that "to the best of my recollection" (481) the Commission had passed upon the names of the negroes testified to as being qualified. The names on one of the lists "looks familiar" (481). He was not certain and he could not have been certain because he did not know many of the negroes on the lists (483, 484) and the names, as he finally said, "don't amount to nothing to me" (490).

But if it be taken for granted that the commission did consult unnamed people, did receive unspecified information and then passed upon the names of *all* the negroes in the community, these things would be no answer to fifty years of exclusion. Lip service is not sufficient nor compliance with forms, when the substance is withheld.

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*Indeed, the opinion of the state court, approved by this Court, showed that the officials had regularly drawn a member of the colored race for service on the grand jury and had drawn from one to three negroes each week for service on the petit jury (96 S. W. 1069, 1073).

**Affidavits in general terms and identical language were furnished by the other two commissioners (492, 493). They recited that inquiry was made "wherever practical" as to the qualification of those persons whose names appeared on the list submitted to them by the jury clerk.

POINT IV.

The Court denied petitioner's constitutional rights in refusing to permit the petitioner full opportunity to prove the systematic exclusion of negroes.

The following rulings, all excepted to, hampered the defense in its attempt to show discrimination.

1) Stewart, the Jackson County Commissioner who testified that race or color was never discussed, was not permitted to be cross-examined to show why it was never discussed, why it never *had* to be discussed (86-87, 114).

The Supreme Court recognized the inquiry as material,—for in its opinion it stressed the fact that race or color never entered into the discussion or consideration of the jury commissioners (681).

2) Petitioner was not permitted to show that no negro name appeared on the jury roll of the Moody commission (102, 106-107),—the jury roll subsequent to the one in controversy.

The rulings were clearly erroneous both because the proposed evidence bore on the existence of a deliberate custom and because the fact that there were no negroes on the subsequent lists would have been strong corroboration of the fact that the six negroes' names were forgeries (compare *Bonaparte* v. *State*, 65 Fla. 287, 290).

A similar error appears in the refusal to permit inquiry into the prior jury rolls of Morgan County (476).

The materiality of the error is emphasized by the statement of Judge Callahan (496):

> "I think if it ran over a long period it might be [sufficient] because I think one would be warranted in saying there must have been something that does not appear from the evidence".

3) Judge Callahan assumed—wrongly, as we have seen (*supra*, p. 17)—that there was testimony that there were names of negroes on the jury roll. Especially in view of this assumption it was error to exclude evidence offered by the defense to show that there was no negro name on the jury roll (161).

The reasons given by Judge Callahan cannot stand analysis. He said that counsel should have been prepared with the proof because from the testimony before Judge Horton the previous spring it had appeared that there were negroes on the jury roll (162). But the Court was in error, even in believing there was any such evidence.*

4) Commissioner Tidwell was asked about the qualifications of J. J. Sykes, a colored man who had served on the federal jury (455), whose testimony (451, 452) showed him to be an honorable citizen with a clear understanding of the duties of jurors and of their qualifications.

Tidwell, on the hearing before Judge Horton, knew nothing against the integrity of Sykes (484). Counsel thereupon attempted (486) to inquire into the reasons why Sykes had not been included on the rolls. The Attorney General objected that the discretion of the jury commission could not be impeached by cross examination as to the qualifications of a particular person (485). The objection was sustained (486). Judge Callahan later ruled that one of the questions so excluded should have been admitted (491).

Tidwell thereupon answered that Sykes had been barred because he was badly crippled (491) and because "we had other information which we thought might affect his character" (491).

This answer was inconsistent with Tidwell's earlier testimony that he knew nothing against Syke's character

*Counsel had in vain tried to have the jury rolls produced (116, 132, 668, 669). The Attorney General had explicitly objected to the production of the rolls (669).

(484). Counsel accordingly sought to delve further. The Court refused this saying "That's all you asked for" (491).

5) Since both courts (496, 685) expressly referred to the testimony of Commissioner Tidwell, that the jury commission had in their deliberations considered the names of the colored persons testified to as qualified for jury duty, it was material error to prevent cross examination by the defense (489, 490, 491) to probe whether he could truthfully swear that they had considered each of the names and further, if they did consider the names, just what tests they had applied in considering them.

6) The Alabama Supreme Court assumed—improperly as we have shown, *supra*, page 22—that there was some conflict of evidence whether there were negroes qualified for jury service in Morgan County (685).

Especially upon that assumption it was manifest error to reject the offer of the defense to call numerous witnesses to show that there were any number of negroes eligible for jury service (472, 473).

7) Where discrimination is the issue, it is of the utmost importance that inquiry be unhampered. But when Benson, the newspaper editor, testified that he didn't think negroes had the sound judgment required by the statute (94) because they hadn't made any study of jury duty (94, 96), the defense was not permitted to inquire to what extent white men met these qualifications (96, 98).*

The witness whose cross examination was thus curtailed is a witness to whose testimony on direct examination the Alabama Supreme Court made specific allusion (683).

---

*In order to show just how qualified Benson was to express the opinion of the incapacity of negroes for jury service, announced over the defense's objection (93, 94), the defense asked him the meaning of "esteemed" (99). The Court ruled out the inquiry (99) but the Attorney General was allowed to ask several of the negroes their understanding of the meaning of this word (123, 130, 139, 141, 144, 146) over the objection of counsel that the Court had excluded the very question when he put it to the editor (123).

• • •

The inherent difficulty of establishing race discrimination is only too obvious. Error in excluding evidence concerning the fact that is the predicate of the Federal constitutional right is a denial of that right. The point is established by decision of this Court in this very field (*Carter* v. *Texas*, 177 U. S. 442, 448). By the same decision of this Court it is established—as by decisions of state courts too it is established (*Bonaparte* v. *State*, 65 Fla. 287, 291; *Whitney* v. *State*, 42 Tex. Crim. 283, 285)—that error there was in the rulings we have listed,—material, repeated, gravely damaging.

• • • •

CONCLUSION.

Neal v. *Delaware* and *Strauder* v. *West Virginia* become meaningless if communities that have raised themselves to the level of the communities here are not to receive the protection of the constitutional provision enacted for their benefit. Jurisdiction must be taken of this application lest a great principle be nullified.

It is therefore respectfully submitted that this case is one calling for the exercise by this court of its supervisory powers to the end that rights under the Constitution of the United States should be preserved, and accordingly a writ of certiorari should be granted and the Court should review and reverse the decision of the Supreme Court of Alabama.

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of Counsel.

SECTION 3258. (6264) (4333) (4509) (4990) *Assignment or joinder of error unnecessary; duty of court.*—In cases taken to the supreme court or court of appeals under the provisions of this chapter, no assignment of errors or joinder in errors is necessary; but the court must consider all questions apparent on the record or reserved by bill of exceptions, and must render such judgment as the law demands. But the judgment of conviction must not be reversed because of error in the record, when the court is satisfied that no injury resulted therefrom to the defendant.

SECTION 6433. (3019) (616-620) (2761) (3113) (2760) (2358) *When bill signed.*—Bills of exceptions may be presented to the judge or clerk at any time within ninety days from the day on which the judgment is entered, and not afterwards; and all general, local, or special laws or rules of court in conflict with this section are repealed, abrogated and annulled. The judge or clerk must indorse thereon and as a part of the bill the true date of presenting, and the bill of exceptions must, if correct, be signed by the judge within sixty days thereafter. When the bill of exceptions is presented to the clerk, it shall be his duty forthwith to deliver or forward it to the judge. Presentation of the bill of exceptions within ninety days after the granting or refusing of a motion for a new trial shall be sufficient to preserve for review the rulings of the trial court on the trial of the original cause, as well as the ruling of the court on the motion for a new trial.

SECTION 6434. (3020) *Striking bills of exceptions, and declining to consider them because not signed within time required.*—The appellate court may strike a bill of exceptions from the record or file because not presented or signed within the time required by law, but shall not do so ex mero motu, but only on motion of a party to the

record of his attorney; the object and effect of this statute being to allow parties to waive or consent for the time of signing bills of exceptions.

SECTION 6670. *Executions on judgments; new trial must be asked in thirty days.*—After the lapse of ten days from the rendition of a judgment or decree, the plaintiff may have execution issued thereon, and after the lapse of thirty days from the date on which a judgment or decree was rendered, the court shall lose all power over it, as completely as if the end of the term had been on that day, unless a motion to set aside the judgment or decree, or grant a new trial has been filed and called to the attention of the court, and an order entered, continuing it for hearing to a future day. (1915, p. 707, Sec. 3.)

SECTION 8603. (7247) *Qualifications of persons placed on jury roll and in jury box.*—The jury commission shall place on the jury roll and in the jury box the names of all male citizens of the county who are generally reputed to be honest and intelligent men, and are esteemed in the community for their integrity, good character and sound judgment, but no person must be selected who is under twenty-one or over sixty-five years of age, or, who is an habitual drunkard, or who, being afflicted with a permanent disease or physical weakness is unfit to discharge the duties of a juror, or who cannot read English, or who has ever been convicted of any offense involving moral turpitude. If a person cannot read English, and has all the other qualifications prescribed herein and is a freeholder or householder, his name may be placed on the jury roll and in the jury box. (1909, p. 305, Sec. 11.)

SECTION 8606. *Jury commission must place name of every qualified person on jury roll: Use of initials alone not allowed.*—The jury commission shall see that the name of every person possessing the qualifications prescribed by

this chapter to serve as a juror shall be placed on the jury roll and in the jury box, and they may summon and cause to attend before them any person residing within the county and examine him on oath, touching the name, residence, occupation and qualification of any person residing in the county. The commission must not allow initials only to be used for a juror's name, but one full Christian name or given name, shall in every case be used, and in case there are two or more persons of the same or similar name, the name by which he is commonly distinguished from the other persons of the same or similar name, shall also be entered as well as his true name. (1909, p. 305, Sec. 14.)

SECTION 9459. *Motions made in writing, on appeal, become part of record.*—All motions which are made in writing in any circuit court or any court of like jurisdiction in any cause or proceeding at law, shall, upon an appeal become a part of the record, and the ruling of the court thereon shall also be made a part of the record, and it shall not be necessary for an exception to be reserved to any ruling of the court upon any such motion; and it shall constitute a part of the record proper on appeal. (1915, p. 598, Sec. 1.)

Norris v. Alabama.

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CLERK

Supreme Court of the United States

OCTOBER TERM, 1934

No. 534

CLARENCE NORRIS
against
STATE OF ALABAMA.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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SUBJECT INDEX

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Supreme Court of the United States

OCTOBER TERM, 1934

CLARENCE NORRIS,
Petitioner,

against

STATE OF ALABAMA,

BRIEF IN OPPOSITION TO PETITION FOR WRITS OF CERTIORARI

I

OPINION OF THE COURT BELOW

The opinion has not yet been officially reported. It appears in the Southern Reporter advance sheets of October 25, 1934, 156 Southern 556 and at pages 676-695 of the record. An application for rehearing was denied without opinion (705-706).

II

STATEMENT OF THE CASE

Petitioner is one of nine Negro boys who is charged with having raped two white girls Victoria Price and Ruby Bates. The crime is alleged to have been committed while the parties were riding on a freight train through Jackson County, Alabama on March 25, 1931.

The nine defendants were tried in Jackson County, Alabama in the Spring of 1931 and all of them

were found guilty of the crime of rape and their punishment fixed at death with the exception of one, Roy Wright, in whose case the jury were unable to agree and a mistrial was ordered by the court. Appeals were taken to the Supreme Court of Alabama which Court affirmed the decision of the lower court as to all of the defendants except one, Eugene Williams, (*Patterson vs. State*, 224 Ala. 531, 141 So. 1955; *Powell et al vs. State*, 224 Ala. 540, 141 So. 201; *Weems et al vs. State*, 224 Ala. 524, 141 So. 215) Thereafter the defendants appealed to the Supreme Court of the United States which Court reversed the decision of the Supreme Court of Alabama on the theory of inadequate representation by counsel (*Powell et al vs. State of Alabama*, 287 U. S. 45). The petitioner in the instant case was originally tried jointly with one, Charlie Weems. The circumstances of that case are reported in the Weems case, supra.

After the cases had been remanded to the Circuit Court of Jackson County for retrial, a motion for change of venue was filed on behalf of the defendants which motion was granted and the cases transferred to the Circuit Court of Morgan County, Alabama.

Heywood Patterson, one of the nine defendants, was put to trial in Morgan County, Alabama in the spring of 1933 and was convicted. Judgment of conviction was subsequently set aside by the trial judge.

There was a motion filed on behalf of all of the defendants to quash the indictment as well as the trial venire when the cases were called for trial before Judge Callahan in the Circuit Court of Mor-

gan County, Alabama in November of 1933. (50) (418) The State denied each and every allegation of the motion to quash the indictment as well as the motion to quash the venire. (57) (429) The ground on which the defendants based their claim that the indictment and the trial venire should be quashed was that Negroes had been arbitrarily and systematically excluded from the juries in Jackson County wherein the indictments were found and in Morgan County wherein the cases were tried. Many witnesses were called and much testimony placed before the trial judge who denied both motions. (163-167) (491-494).

The defendant was found guilty on December 6, 1933 and was sentenced to death on the same date. He appealed to the Supreme Court of Alabama which Court affirmed the decision of the lower court.

III

QUESTIONS PRESENTED

On page 8 of the brief filed in this Court by counsel for petitioner are set out the rulings of the court below which petitioner urges are erroneous. They are three in number and are as follows: (1) That the Court denied petitioner's constitutional rights in refusing to quash the indictment by the grand jury in Jackson County; (2) The Court denied petitioner's constitutional rights in refusing to quash the venire of the petit jury in Morgan County; (3) The Court denied petitioner's constitutional rights in refusing to permit petitioner full opportunity to prove that Negroes were systematically excluded.

The State of Alabama recognizes the principle as stated by counsel for petitioner in their brief wherein they state that the indictment of a member of he Negro Race and his conviction by a jury from which Negroes are systematically excluded is a denial of equal protection of the law. However, the evidence presented to the trial judge in this case and afterwards reviewed by the Suprme Court of Alabama does not disclose that Negroes were systematically and arbitrarily excluded from the juries of Jackson County because of their race or color in controvention of the Fourteenth Amendment to the Constitution of the United Staes.

IV

REVIEW BY THE SUPREME COURT OF THE UNITED STATES

Whether or not discrimination against Negroes because of their race or color was practiced by the Jury Commissioners in the selection of grand or petit jurors is a question of fact, the decision of which by the State Court is conclusive on the Federal Supreme Court unless so grossly wrong as to amount to an infraction of the Federal Constitution.

The petitioner's sole hope for relief before this Honorable Court is based on his contention that the petitioner was denied those constitutional rights guaranteed him by the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

Petitioner admits in his brief, filed in support of his petition, that Section 14 of Act No. 47, H. B. 70,

approved February 20, 1931 (General Acts 1931, page 55) which prescribes the qualifications of jurors and the method by which their names are placed in the jury boxes of the State of Alabama is constitutional. Said section is practically identical with Section 8603, Code of Alabama, 1923.

This Honorable Court, in the case of *Franklin vs. South Carolina*, 218 U. S. 161, 54 L. Ed. 980, held that a state law fixing the qualifications of jurors which qualifications were practically the same as the Alabama statutes now under consideration, was constitutional. Petitioner contends, however, that although the statute of Alabama providing for the selection of those persons to sit on the juries is constitutional that the Jury Commissioners have not complied with the law and have arbitrarily excluded Negroes because of their race or color.

The State of Alabama in the trial of this case did not file demurrers to the motions to quash nor did it in any way admit the truthfulness of the allegations contained in petitioner's motions nor did the State in any way prevent or attempt to prevent the petitioner from legally proving the truthfulness of the allegations contained in said motion.

The State denied the allegations of the motion thus putting the burden of proof on the petitioner to prove the truthfulness of his allegations and we respectfully submit that the proof offered in support of the motion wholly failed to establish the fact that the members of the Jury Commission or Jury Board of the counties of Jackson and Morgan systematically and arbitrarily excluded from the jury

rolls of their respective counties the names of members of the African race purely because of race or color.

We fully recognize the principle as laid down in *Strauder vs. West Virginia*, 100 U. S. 303; *Neal vs. Delaware*, 103 U. S. 370; *Carter vs. Texas*, 177 U. S. 442; *Martin vs. Texas*, 200 U. S. 316, but we respectfully submit that those cases do not in any way decide the question presented in this case.

The cases above cited not only state the general principle that statutes which prohibit members of the African race from serving as jurors because of their race or color are unconstitutional but also provide that where a member of a person of the African race is indicted or tried by a jury from which the members of his race have been arbitrarily and systematically excluded, that he is denied equal protection of the law as guaranteed him by the Constitution of the United States.

The instant case differs from most of the other cases which have been before this Court on the question of exclusion of Negroes from serving as jurors because of their race or color in that the State of Alabama has merely denied the allegations of the petitioner's motions to quash, thus placing upon him the burden of sustaining the allegations. The only case which the writers of this brief have been able to find which deals in any way with the questions presented in this case is *Thomas vs. Texas*, 212 U. S. 295 Sup. Ct. 393, 53 L. Ed. 512, which case we will later discuss.

In other words, the question presented at this time and at this stage of the proceedings is whether or not the Supreme Court of the United States will review a finding of fact made not only by a nisi prius court of the State of Alabama but by the Supreme Court of that State.

The Supreme Court of Alabama, in its opinion in this case, fully discusses the question as to whether or not the evidence presented in support of petitioner's motion was such as to render the judgment or decision made by he trial court erroneous.

This Court, in the case of *Thomas vs. Texas*, 212 U. S. 278, held as follows:

> Where neither the constitutionality of a state statute nor the interpretation of the state court is assailed, but the contention is that Negroes were excluded from the juries because of their race or color, the question is one of fact and the decision of the state court is not reviewable by this court under Section 709, Rev. Stat. in the absence of such gross abuse as to amount to denial of due process of law.

The rule is settled that the decision of a state court upon a question of fact ordinarily cannot be made the subject of inquiry in the Supreme Court of the United States. *(Smiley vs. Kansas*, 196 U. S. 447).

To this general rule there are two equally settled exceptions: (1) Where a Federal right has been denied as the resuit of a finding shown by the record to be without evidence to support it; (2) Where a conclusion of law as to a Federal right and

findings of fact are so entangled as to make it necessary in order to pass upon the Federal question to analyze the facts.

Northern Pacific R. R. vs. North Dakota, 35 Sup. Ct. 429, 236 U. S. 585.

We respectfully insist that the evidence presented to the trial court in support of petitioner's motions to quash was totally insufficient to sustain the allegations of petitioner's motions and that the judgment or decision of the trial court, as well as that of the Supreme Court of Alabama, is completely justified by the evidence or lack of evidence presented and that the evidence is not such as to bring this case within the exceptions to the rule that the decision of a state court upon a question of fact cannot be made a subject of inquiry in the Supreme Court of the United States.

POINT I

MOTION TO QUASH INDICTMENT

The Jury Commissioners of Jackson County, Alabama were charged with the duty of placing on the jury rolls of Jackson County the names of all male citizens of the county who were generally reputed to be honest and dependable men and who were esteemed in their community for their integrity, good character and sound judgment provided that no person could be selected who was under the age of twenty-one or over the age of sixty-five years or who was an habitual drunkard or who was afflicted with a permanent disease or physicial weakness if such would render him unable to discharge the duties of

a juror or one who could not read English or who had ever been convicted of any offense involving moral turpitude. However, if a person could not read English and had all the other qualifications and was a freeholder or householder, his name could be placed on the jury roll and in the jury box.

A casual reading of that provision of the law which provides the method by which the jury commissioners are to fill the jury boxes of their respective counties immediately discloses that there is vested in those men an irrevisible discretion. They are charged with the duty of placing on the jury rolls of their counties men who in their opinion possess the qualifications prescribed by statute. They could not put in the jury boxes or on the jury rolls of Jackson County, Alabama the name of a member of the African Race if they did not truthfully and honestly believe that that man possessed the qualifications prescribed by the statutes even though it might be expedient for the purpose of saving and preventing such litigation as this

The State having denied the allegations in the motions to quash filed by petitioner, we respectfully submit that the burden to establish the truthfulness of the allegations was upon the petitioner. This court held in *Martin vs. Texas*, 200 U. S. 316, as follows:

> While an accused person of African descent on trial in a state court is entitled under the Constitution of the United States to demand that in organizing the grand jury and empaneling a petit jury there shall be no exclusion of his race on account of race or color, such dis-

> crimination cannot be established by merely proving that no one of his race was on either of the juries and motions to quash based on alleged discriminations of that nature must be supported by evidence introduced or by an actual offer of proof in regard thereto.

and in *Tarrance vs. Florida*, 188 U. S. 519.

> An actual discrimination by the officers charged with the administration of statutes unobjectionable in themselves against the race of a Negro on trial for a crime by purposely excluding Negroes from the grand and petit juries of the county will not be pressumed but must be proved.

The motion to quash the indictment appears on pages 44-50 of the printed record. Petitioner and his codefendants made oath that the facts as alleged in the petition were true to the best of their knowledge and belief. Attached to the petition were Exhibits A, B, and C (51) (54) (56). These exhibits are in the form or nature of affidavits to the effect that the affiant is familiar with certain members of the Negro Race resident in Jackson County, Alabama and that said Negroes are, in the opinion of the affiant, possessed of all the qualifications prescribed by the laws of Alabama for serving on juries in the State of Alabama. It is passing strange that all of these exhibits or affidavits were made by parties or persons resident in Chattanooga, Tennessee. It is also strange that two of the affidavits were made before G. M. Chamblee, Jr., a Notary Public of Hamilton County, Tennessee, who is a son of one of the attorneys who represented the petitioner in the trial court.

It is definitely settled that the burden of proving that there was an actual discrimination against Negroes because they are Negroes, is upon the petitioner.

Tarrance vs. Florida, supra.

The fact that no one remembered seeing a Negro serve on the juries of Jackson County for a period of years is not conclusive proof that names of Negroes were not on the jury rolls and in the jury box from which were drawn the names of those individuals who comprised the grand jury which indicted the petitioner. Petitioner had several of his witnesses examine the jury rolls of Jackson County and it appeared that the names of several Negroes were on that roll. Although the Supreme Court of Alabama did not base its decision on that point, we respectfully insist that the evidence affirmatively shows the names of Negroes to be on the jury rolls. The evidence most certainly does not show that the names of Negroes were not on the rolls.

Admitting for the purpose of argument, however, that there were no names of Negroes on the Jackson County jury roll at the time the indictment against petitioner was found, we still insist that the proof utterly fails to show that they were not there because the Jury Commissioners systematically and arbitrarily exclude them therefrom solely because of the fact that their skin was black or because they were members of the African Race.

The Jury Commissioners will have to be branded as liars and presumptions will have to take precedence over positive statements of fact in order to

reach the conclusion that Negroes were excluded from the jury rolls of Jackson County because of race or color. Mr. Stewart, one of the Jury Commissioners, made the positive statement that the Jury Commission did not automatically or systematically exclude anybody. (85) Mr. Stewart also testified that the Jury Commission considered every man whose name was on the list presented to them by their clerk, Mr. Morgan. (85) (86) Mr. Morgan testified that he was clerk of the Jury Commission and that he compiled a list of the male citizens of Jackson County between the ages of twenty-one and sixty-five years without regard to their status or qualifications, and that the list contained the names of all the male citizens of the county. (74) (75).

The Circuit Court of Morgan County, Alabama saw the witnesses and heard their testimony. He heard the Jury Commissioner make the positive statement that the Jury Commission had not discriminated against any man because of race or color. The court heard the testimony given by the several colored witnesses in support of the motions to quash. He was in a position to pass on their ability to judge the qualifications of jurors. There was not presented to the trial judge one iota of testimony that definitely determined that there were no Negroes' names on the jury rolls. There was testimony to the effect that the names of several of them were on there. He saw and heard all the witnesses and was in a position to determine the interest of each in the case. The Supreme Court of Alabama saw no reason to upset his decision on the finding of fact.

We respectfully submit that the trial judge did not arbitrarily and unjustifiably deny petitioner's motion to quash but that on the other hand the overwhelming weight of the evidence is in support of his ruling.

This Honorable Court will not under the evidence in this case attempt to go into a county in the State of Alabama and say to the officials of that county who are charged with the duty of passing upon the qualifications of those persons who are to serve as jurors that there are Negroes whose names should be on the jury roll. Especially is this true where a trial court and the Supreme Court of a Sovereign State have positively stated that the evidence does not disclose that the petitioner was denied any consitutional right.

The evidence shows that the male population of Jackson County over the age of twenty-one and under the age of sixty-five was 8,801, and that of this number only 666 were Negroes. In other words, 93 per cent of the male population between the ages of twenty-one and sixty-five were members of the white race (92). It is also strange that of these 666 Negroes the colored witnesses used by the petitioner in support of his motion named only 37 who in their opinion possessed the qualifications necessary to service as a juror, which number is less than one-half of one per cent of the male population of the county between the ages of twenty-one and sixty-five and less than six per cent of the Negro population between the ages of twenty-one and sixty-five.

We respectfully submit that this Honorable Court will not disturb the decision of the lower court for the following reasons:

(1) That the petitioner's own witnesses testify that the names of Negroes were on the jury roll;

(2) That the petitioner has failed to prove that there has been an actual discrimination of members of his race because of race and color;

(3) That the decision of this case is based not on a question of law but on a question of fact and that this Honorable Court will not review a finding of fact by a State Court in the absence of a showing of such gross abuse as to amount to a denial of due process of law.

POINT II

MOTION TO QUASH VENIRE

The same procedure was followed in connection with the motion to quash the venire as transpired on the motion to quash the indictment. The state denied the allegations of the motion. The petitioner then introduced the evidence taken on this phase of the case in a former trial before Judge Horton held in the Spring of 1933.

The petitioner called a number of colored men who testified that in their opinion there were a large number of men of the colored race between the ages of twenty-one and sixty-five who possessed the qualifications required by law of those persons who are to serve as jurors. Several of the witnesses produced long lists of colored men whom they claimed possessed the requisite qualifications. (431-473)

The petitioner also produced several witnesses who testified that they had never seen a Negro serve on a grand jury or on a petit jury in Morgan County, Alabama.

There is no positive testimony to the effect that the jury rolls of Morgan County do not contain the names of members of the colored race. The burden is not on the state to prove that they are there but on the contrary it is on the movant to show not only that they are not on the jury rolls but their absence is due to the fact that the Jury Board arbitrarily and systematically excluded members of his race because of their race and color.

If the members of the Jury Commission are to be believed, no such discrimination was shown. On the contrary, it is imphatically disproved. These officers are clearly without personal interest in this case, and we submit that there is nothing in the record to justify the conclusion that they have deliberately testified falsely. The petitioner's contention cannot avail except that the conclusion be reached that the members of the Jury Board of Morgan County committed perjury.

Mr. J. A. Tidwell, a member of the Jury Board of Morgan County, testified that the Board selected the jury roll from a list of all the male citizens of the County between twenty-one and sixty-five years of age, irrespective of race or color. That inquire was made among various citizens, including some of the colored race, and that neither race nor color was considered by the Board in making up this roll. The

witness was shown the lists of names offered by defendant's witnesses as possessing proper qualifications, and stated that to the best of his recollection the Board considered the names of persons on those lists, sitting officially in their deliberations. (474, 480-491).

On page 491 of the record appears a statement of Mr. Tidwell's which positively discloses that members of the Negro Race were considered by the Jury Board. In answer to a question as to why the name of J. J. Sykes does not appear on the jury roll of Morgan County Mr. Tidwell said, "He is very badly crippled and when we were discussing his case, his fitness for jury service, we thought that his condition was such that he wasn't physically able for jury duty and we had other information which we thought might affect his character so as to bar him from the jury."

The remaining members of the Jury Board of Morgan County made affidavits containing the following statements, (492) (494).

> "That the clerk of the jury board, in pursuance to law, submitted to the jury board of which affiant is a member, a list containing the name of every male citizen of Morgan County, Alabama, between the ages of twenty-one and sixty-five years of age, which list, so far as affiant knows or can ascertain, was complete and correct. That from this list, the jury board selected those persons who, in their opinion, possessed the qualifications prescribed by law. That in the selection of those persons whose names appear on the jury roll and in the jury

box, the members of the jury board did not exclude any person because of race or color, but considered every man whose name was placed on the list submitted to them by the clerk of the jury board, and only excluded those persons who, in their judgment, did not possess the qualifications prescribed by statute and further states that their judgment was not arbitrarily arrived at, an inquiry being made whenever practical as to the qualifications of those persons whose names appeared on the list submitted to them by the jury clerk. Affiant further states that he cannot definitely state whether or not the names of colored men appear on the jury roll or in the jury box of Morgan County, inasmuch as it is impossible for him to know each person personally."

Sworn officers of the law, men possessing qualifications sufficient to cause them to be selected by the Governor of Alabama as the three men out of the entire population of Morgan County to serve in one of the most important capacities in the county have made two positive statements: (1) That they did not exclude Negroes from the jury rolls of Morgan County because of their race or color; (2) That they did consider members of the Negro Race when they were engaged in preparing said jury rolls. There is not one scintilla of evidence in the record in contradiction of these statements.

We especially call to the attention of this Court the case of *Green vs. State*, 73 Ala. 26, not that it could have any binding effect on this Court's decision but because it contains a most vivid and lucid discussion of the question at hand.

In view of the fact that the undisputed evidence in this case is to the effect that the Jury Board of Morgan County considered members of the Negro Race for jury duty and that none of that race was excluded because of race or color, we respectfully submit that the trial court could have come to no other conclusion than that reached.

CONCLUSION

The Supreme Court of Alabama has upheld the finding of fact made by a trial court of the State of Alabama. This Honorable Court will not review that finding in view of the fact that there was ample evidence upon which the ruling of the lower court was founded.

We respectfully submit that this Honorable Court will not upset the decision of a state court such as in this case where the evidence actually fails to show that petitioner has been denied any of his constitutional rights.

THOMAS E. KNIGHT, Jr.,
Attorney General of Alabama.

THOS. SEAY LAWSON,
Assistant Attorney General
of Alabama.
Attorney for the State of Alabama.

APPENDIX

ALABAMA STATUTES

Act No. 47, H. B. 70, General Acts 1931, page 55 (Section 11).

Section 11. The clerk of the Jury Board shall, under the direction of the Jury Board, obtain the name of every male citizen of the county over twenty-one and under sixty-five years of age and their occupation, place of residence and place of business, and shall perform all such other duties required of him by law under the direction of the Jury Board.

Act No. 47, H. B. 70, General Acts 1931, page 55 (Section 14) which is identical with Section 8603, Code of Alabama, 1923.

Section 14. The jury commission shall place on the jury roll and in the jury box the names of all male citizens of the county who are generally reputed to be honest and intelligent men, and are esteemed in the community for their integrity, good character and sound judgment, but no person must be selected who is under twenty-one or over sixty-five years of age, or, who is an habitual drunkard, or who, being afflicted with a permanent disease or physical weakness is unfit to discharge the duties of a juror, or who cannot read English, or who has ever been convicted of any offense involving moral turpitude. If a person cannot read English and has all the other qualifications prescribed herein and is a freeholder or householder, his name may be placed on the jury roll and in the jury box.

FILE COPY

Supreme Court of the

CLARENCE NORRIS,

Appellant,

—against—

STATE OF ALABAMA,

Respondent.

MOTION TO SUBSTITUTE ATTORNEYS.

SAMUEL S. LEIBOWITZ,
Office and Post Office Address,
[illegible] Broadway,
Borough of Manhattan,
New York City.

and

GEORGE W. CHAMLEE,
Office and Post Office Address,
[illegible] East Seventh Street,
Chattanooga, Tennessee.

Rand Ozone Press, Inc., N. Y. C.

Supreme Court of the United States

CLARENCE NORRIS,
Appellant,
—against—
STATE OF ALABAMA,
Respondent.

Notice of Motion.

Sirs:

PLEASE TAKE NOTICE, that on the petition of Clarence Norris, verified the 12th day of January, 1935, a copy of which is hereto annexed, and the affidavit of Samuel S. Leibowitz, verified the 15th day of January, 1935, the undersigned will move this Court at its session to be held on the 21st day of January, 1935, for an order directing the substitution of Samuel S. Leibowitz, Esq., and George W. Chamlee, Esq., as attorneys for the appellant, Clarence Norris, in place and stead of Walter H. Pollak, Esq., and Osmond K. Fraenkel, Esq.

Dated, January 15th, 1935.

Yours respectfully,

SAMUEL S. LEIBOWITZ,
Office and Post Office Address,
225 Broadway,
Borough of Manhattan,
New York City.

and

GEORGE W. CHAMLEE,
Office and Post Office Address,
122½ East Seventh Street,
Chattanooga, Tennessee.

To:

WALTER H. POLLAK, ESQ.,
74 Trinity Place,
New York City.

OSMOND K. FRAENKEL, ESQ.,
76 Beaver Street,
New York City.

Petition of Clarence Norris.

SUPREME COURT OF THE UNITED STATES.

CLARENCE NORRIS,
Appellant,
—against—
STATE OF ALABAMA,
Respondent.

The undersigned hereby requests and moves this Court that Samuel S. Leibowitz, Esq., and George W. Chamlee, Esq., be substituted as his attorneys in the above entitled matter, in place and stead of Walter H. Pollak and Osmond K. Fraenkel, who are now the attorneys of record herein, and that an order to that effect may be entered by this Court.

Dated, Montgomery, Alabama, January 12, 1935.

CLARENCE NORRIS.

WITNESSED:

FRED CURTIS.

State of Alabama,
County of Montgomery.

Before me the undersigned Notary Public, duly appointed, commissioned and qualified in and for the county aforesaid personally appeared Clarence Norris who acknowledged that he executed the foregoing Substitution of Attorneys.

This the 12th day of January, 1935.

W. H. LINDSEY,
Notary Public,
Montgomery County, Alabama.

(Seal)

Affidavit of Samuel S. Leibowitz.

SUPREME COURT OF THE UNITED STATES.

CLARENCE NORRIS,
Appellant,

—against—

STATE OF ALABAMA,
Respondent.

State of New York,
County of Kings—ss.:

SAMUEL S. LEIBOWITZ, having been duly sworn, deposes and says:

That he is a member of the bar of the Supreme Court of the United States, having been duly admitted during the October Term, 1934, to practice before that tribunal, and that he maintains offices and has as his post-office address, 225 Broadway, in the City and State of New York.

That on the 7th day of January, 1935, a writ of certiorari was issued by this Court to the Supreme Court of the State of Alabama ordering that Court and its officers to file in the Supreme Court of the United States the records and proceedings in the case of State of Alabama v. Clarence Norris.

That the said defendant Clarence Norris, by his petition hereto attached, prays that this deponent and one George W. Chamlee be substituted in place and in stead of his present attorneys, Walter H. Pollak and Osmond K. Fraenkel.

That the said George W. Chamlee has also been duly admitted to practice before this Court.

That your deponent has spoken to the said George W. Chamlee about this petition for substitution of counsel, and that George W. Chamlee has assented to serve as one of the attorneys on behalf of the defendant Clarence Norris; that no affidavit by George W. Chamlee is being filed because the said George W. Chamlee is not in the State of New York at the present time.

WHEREFORE, this deponent, on behalf of the petitioner Clarence Norris, prays that an order be made, entered and filed substituting Samuel S. Leibowitz and George W. Chamlee as attorneys, for this defendant in the matter of the State of Alabama v. Norris.

SAMUEL S. LEIBOWITZ.

Sworn to before me this
15th day of January, 1935.

M. E. BIEDERMAN,
Notary Public,
Kings Co. N. Y.

SUPREME COURT OF THE UNITED STATES.

No. 534.—October Term, 1934.

Clarence Norris, Petitioner, *vs.* The State of Alabama.	On Writ of Certiorari to the Supreme Court of the State of Alabama.

[April 1, 1935.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

Petitioner, Clarence Norris, is one of nine negro boys who were indicted in March, 1931, in Jackson County, Alabama, for the crime of rape. On being brought to trial in that county, eight were convicted. The Supreme Court of Alabama reversed the conviction of one of these and affirmed that of seven, including Norris. This Court reversed the judgments of conviction upon the ground that the defendants had been denied due process of law in that the trial court had failed in the light of the circumstances disclosed, and of the inability of the defendants at that time to obtain counsel, to make an effective appointment of counsel to aid them in preparing and presenting their defense. *Powell* v. *Alabama*, 287 U. S. 45.

After the remand, a motion for change of venue was granted and the cases were transferred to Morgan County. Norris was brought to trial in November, 1933. At the outset, a motion was made on his behalf to quash the indictment upon the ground of the exclusion of negroes from juries in Jackson County where the indictment was found. A motion was also made to quash the trial *venire* in Morgan County upon the ground of the exclusion of negroes from juries in that county. In relation to each county, the charge was of long continued, systematic and arbitrary exclusion of qualified negro citizens from service on juries, solely because of their race and color, in violation of the Constitution of the United States. The State joined issue on this charge and after hearing the evidence, which we shall presently review, the trial judge denied both motions, and exception was taken. The trial then proceeded and resulted in the conviction of Norris who was sentenced to death. On appeal, the Supreme Court of the State

considered and decided the federal question which Norris had raised and affirmed the judgment. 156 So. 556. We granted a writ of certiorari. 293 U. S. 552.

First. There is no controversy as to the constitutional principle involved. That principle, long since declared, was not challenged, but was expressly recognized, by the Supreme Court of the State. Summing up precisely the effect of earlier decisions, this Court thus stated the principle in *Carter* v. *Texas*, 177 U. S. 442, 447, in relation to exclusion from service on grand juries: "Whenever by any action of a State, whether through its legislature, through its courts, or through its executive or administrative officers, all persons of the African race are excluded, solely because of their race or color, from serving as grand jurors in the criminal prosecution of a person of the African race, the equal protection of the laws is denied to him, contrary to the Fourteenth Amendment of the Constitution of the United States. *Strauder* v. *West Virigina*, 100 U. S. 303; *Neal* v. *Delaware*, 103 U. S. 370, 397; *Gibson* v. *Mississippi*, 162 U. S. 565". This statement was repeated in the same terms in *Rogers* v. *Alabama*, 192 U. S. 226, 231, and again in *Martin* v. *Texas*, 200 U. S. 316, 319. The principle is equally applicable to a similar exclusion of negroes from service on petit juries. *Strauder* v. *West Virginia*, *supra*; *Martin* v. *Texas*, *supra*. And although the state statute defining the qualifications of jurors may be fair on its face, the constitutional provision affords protection against action of the State through its administrative officers in effecting the prohibited discrimination. *Neal* v. *Delaware*, *supra*; *Carter* v. *Texas*, *supra*. Compare *Virginia* v. *Rives*, 100 U. S. 313, 322, 323; *In re Wood*, 140 U. S. 278, 285; *Thomas* v. *Texas*, 212 U. S. 278, 282, 283.

The question is of the application of this established principle to the facts disclosed by the record. That the question is one of fact does not relieve us of the duty to determine whether in truth a federal right has been denied. When a federal right has been specially set up and claimed in a state court, it is our province to inquire not merely whether it was denied in express terms but also whether it was denied in substance and effect. If this requires an examination of evidence, that examination must be made. Otherwise, review by this Court would fail of its purpose in safeguarding constitutional rights. Thus, whenever a conclusion of law of a

state court as to a federal right and findings of fact are so intermingled that the latter control the former, it is incumbent upon us to analyze the facts in order that the appropriate enforcement of the federal right may be assured. *Creswill* v. *Knights of Pythias*, 225 U. S. 246, 261; *Northern Pacific Railway Co.* v. *North Dakota*, 236 U. S. 585, 593; *Ward* v. *Love County*, 253 U. S. 17, 22; *Davis, Director General* v. *Wechsler*, 263 U. S. 22, 24; *Fiske* v. *Kansas*, 274 U. S. 380, 385, 386; *Ancient Egyptian Order* v. *Michaux*, 279 U. S. 737, 745.

Second. The evidence on the motion to quash the indictment. In 1930, the total population of Jackson County, where the indictment was found, was 36,881, of whom 2688 were negroes. The male population over twenty-one years of age numbered 8801, and of these 666 were negroes.

The qualifications of jurors were thus prescribed by the state statute (Alabama Code, 1923, Sec. 8603): "The jury commission shall place on the jury roll and in the jury box the names of all male citizens of the county who are generally reputed to be honest and intelligent men, and are esteemed in the community for their integrity, good character and sound judgment, but no person must be selected who is under twenty-one or over sixty-five years of age, or, who is an habitual drunkard, or who, being afflicted with a permanent disease or physical weakness is unfit to discharge the duties of a juror, or who cannot read English, or who has ever been convicted of any offense involving moral turpitude. If a person cannot read English and has all the other qualifications prescribed herein and is a freeholder or householder, his name may be placed on the jury roll and in the jury box." See Gen. Acts, Alabama, 1931, No. 47, p. 59.

Defendant adduced evidence to support the charge of unconstitutional discrimination in the actual administration of the statute in Jackson County. The testimony, as the state court said, tended to show that "in a long number of years no negro had been called for jury service in that county". It appeared that no negro had served on any grand or petit jury in that county within the memory of witnesses who had lived there all their lives. Testimony to that effect was given by men whose ages ran from fifty to seventy-six years. Their testimony was uncontradicted. It was supported by the testimony of officials. The clerk of the jury commission and

the clerk of the circuit court had never known of a negro serving on a grand jury in Jackson County. The court reporter, who had not missed a session in that county in twenty-four years, and two jury commissioners testified to the same effect. One of the latter, who was a member of the commission which made up the jury roll for the grand jury which found the indictment, testified that he had "never known of a single instance where any negro sat on any grand or petit jury in the entire history of that county".

That testimony in itself made out a *prima facie* case of the denial of the equal protection which the Constitution guarantees. See *Neal* v. *Delaware, supra.* The case thus made was supplemented by direct testimony that specified negroes, thirty or more in number, were qualified for jury service. Among these were negroes who were members of school boards, or trustees, of colored schools, and property owners and householders. It also appeared that negroes from that county had been called for jury service in the federal court. Several of those who were thus described as qualified were witnesses. While there was testimony which cast doubt upon the qualifications of some of the negroes who had been named, and there was also general testimony by the editor of a local newspaper who gave his opinion as to the lack of "sound judgment" of the "good negroes" in Jackson County, we think that the definite testimony as to the actual qualifications of individual negroes, which was not met by any testimony equally direct, showed that there were negroes in Jackson County qualified for jury service.

The question arose whether names of negroes were in fact on the jury roll. The books containing the jury roll for Jackson County for the year 1930-31 were produced. They were produced from the custody of a member of the jury commission which, in 1931, had succeeded the commission which had made up the jury roll from which the grand jury in question had been drawn. On the pages of this roll appeared the names of six negroes. They were entered, respectively, at the end of the precinct lists which were alphabetically arranged. The genuineness of these entries was disputed. It appeared that after the jury roll in question had been made up, and after the new jury commission had taken office, one of the new commissioners directed the new clerk to draw lines after the names which had been placed on the roll by the preceding commission. These lines, on the pages under considera-

tion, were red lines, and the clerk of the old commission testified that they were not put in by him. The entries made by the new clerk, for the new jury roll, were below these lines.

The names of the six negroes were in each instance written immediately above the red lines. An expert of long experience testified that these names were superimposed upon the red lines, that is, that they were written after the lines had been drawn. The expert was not cross-examined and no testimony was introduced to contradict him.[1] In denying the motion to quash, the trial judge expressed the view that he would not "be authorized to presume that somebody had committed a crime" or to presume that the jury board "had been unfaithful to their duties and allowed the books to be tampered with". His conclusion was that names of negroes were on the jury roll.

We think that the evidence did not justify that conclusion. The Supreme Court of the State did not sustain it. That court observed that the charge that the names of negroes were fraudulently placed on the roll did not involve any member of the jury board, and that the charge "was, by implication at least, laid at the door of the clerk of the board". The court, reaching its decision irrespective of that question, treated that phase of the matter as "wholly immaterial" and hence passed it by "without any expression of opinion thereon".

The state court rested its decision upon the ground that even if it were assumed that there was no name of a negro on the jury roll, it was not established that race or color caused the omission. The court pointed out that the statute fixed a high standard of qualifications for jurors (*Green* v. *State*, 73 Ala. 26; *State* v. *Curtis*, 210 Ala. 1) and that the jury commission was vested with a wide discretion. The court adverted to the fact that more white citizens possessing age qualifications had been omitted from the jury roll than the entire negro population of the county, and regarded the testimony as being to the effect that "the matter of race, color, politics, religion or fraternal affiliations" had not been discussed by the commission and had not entered into their consideration, and that no one had been excluded because of race or color.

The testimony showed the practice of the jury commission. One of the commissioners who made up the jury roll in question, and

[1] The books containing the jury roll in question were produced on the argument at this bar and were examined by the Court.

the clerk of that commission, testified as to the manner of its preparation. The other two commissioners of that period did not testify. It was shown that the clerk, under the direction of the commissioners, made up a preliminary list which was based on the registration list of voters, the polling list and the tax list, and apparently also upon the telephone directory. The clerk testified that he made up a list of all male citizens between the ages of twenty-one and sixty-five years without regard to their status or qualifications. The commissioner testified that the designation "col." was placed after the names of those who were colored. In preparing the final jury roll, the preliminary list was checked off as to qualified jurors with the aid of men whom the commissioners called in for that purpose from the different precincts. And the commissioner testified that in the selections for the jury roll no one was "automatically or systematically" excluded, or excluded on account of race or color; that he "did not inquire as to color", that was not discussed.

But, in appraising the action of the commissioners, these statements cannot be divorced from other testimony. As we have seen, there was testimony, not overborne or discredited, that there were in fact negroes in the county qualified for jury service. That testimony was direct and specific. After eliminating those persons as to whom there was some evidence of lack of qualifications, a considerable number of others remained. The fact that the testimony as to these persons, fully identified, was not challenged by evidence appropriately direct, cannot be brushed aside. There is no ground for an assumption that the names of these negroes were not on the preliminary list. The inference to be drawn from the testimony is that they were on that preliminary list, and were designated on that list as the names of negroes, and that they were not placed on the jury roll. There was thus presented a test of the practice of the commissioners. Something more than mere general asseverations was required. Why were these names excluded from the jury roll? Was it because of the lack of statutory qualifications? Were the qualifications of negroes actually and properly considered?

The testimony of the commissioner on this crucial question puts the case in a strong light. That testimony leads to the conclusion that these or other negroes were not excluded on account of age, or lack of esteem in the community for integrity and judgment, or

because of disease or want of any other qualification. The commissioner's answer to specific inquiry upon this point was that negroes were "never discussed". We give in the margin quotations from his testimony.[2]

We are of the opinion that the evidence required a different result from that reached in the state court. We think that the evidence that for a generation or longer no negro had been called for service on any jury in Jackson County, that there were negroes qualified for jury service, that according to the practice of the jury commission their names would normally appear on the preliminary list of male citizens of the requisite age but that no names of negroes were placed on the jury roll, and the testimony with respect to the lack of appropriate consideration of the qualifications of negroes, established the discrimination which the Constitution forbids. The motion to quash the indictment upon that ground should have been granted.

Third. The evidence on the motion to quash the trial venire. The population of Morgan County, where the trial was had, was larger than that of Jackson County, and the proportion of negroes

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[2] "Q. Did you ever exclude from the jury rolls any negroes because you found first, he was a man under twenty-one years old or over sixty-five, and he was excluded by reason of his age; secondly because he was a person who wasn't esteemed in the community for being a decent and honorable citizen, for good sound common sense and judgment, did you ever see or hear of them not going to take that negro because he wasn't esteemed in the community for good sense and judgment? A. No, sir.

"Q. Did you ever have occasion to say, I can't take that negro because he is a fellow that has a disease which may affect or does affect, his mentality, did you ever say that to yourself, with reference to any particular negro? A. No, sir, negroes was never discussed.

"Q. Did you ever say to yourself as a jury commissioner in compiling those lists, I am not going to take that negro because he has been convicted before of a crime involving moral turpitude, have you ever excluded a negro on that ground, did you ever find any negro that came within that category, under your personal knowledge in Jackson County? A. I couldn't recall any, no, sir, I don't know.

"Q. Have you ever known of any negro in Jackson County who was excluded by reason of the fact that he could not read English, and that negro at the same time wasn't a free holder or house holder, did you ever say I can't take that negro because he is prohibited under the rules from serving by reason of that provision? A. No, sir.

" Q. Or anybody in your presence? A. It never was discussed.

"Q. You had been a jury commissioner how long? A. I was on it under Bibb Graves administration, 1928, 1929, 1930.

"Q. Three years? A. Yes, sir.

"Q. And you never had occasion to exclude any negro in Jackson County by reason of the disqualifying provisions I have just called to your attention? A. Not to my personal knowledge, no, sir".

was much greater. The total population of Morgan County in 1930 was 46,176, and of this number 8311 were negroes.

Within the memory of witnesses, long resident there, no negro had ever served on a jury in that county or had been called for such service. Some of these witnesses were over fifty years of age and had always lived in Morgan County. Their testimony was not contradicted. A clerk of the circuit court, who had resided in the county for thirty years, and who had been in office for over four years, testified that during his official term approximately 2500 persons had been called for jury service and that not one of them was a negro; that he did not recall "ever seeing any single person of the colored race serve on any jury in Morgan County".

There was abundant evidence that there were a large number of negroes in the county who were qualified for jury service. Men of intelligence, some of whom were college graduates, testified to long lists (said to contain nearly 200 names) of such qualified negroes, including many business men, owners of real property and householders. When defendant's counsel proposed to call many additional witnesses in order to adduce further proof of qualifications of negroes for jury service, the trial judge limited the testimony, holding that the evidence was cumulative.

We find no warrant for a conclusion that the names of any of the negroes as to whom this testimony was given, or of any other negroes, were placed on the jury rolls. No such names were identified. The evidence that for many years no negro had been called for jury service itself tended to show the absence of the names of negroes from the jury rolls, and the State made no effort to prove their presence. The trial judge limited the defendant's proof "to the present year, the present jury roll". The sheriff of the county, called as a witness for defendants, scanned the jury roll and after "looking over every single name on that jury roll, from A to Z", was unable to point out "any single negro on it".

For this long-continued, unvarying, and wholesale exclusion of negroes from jury service we find no justification consistent with the constitutional mandate. We have carefully examined the testimony of the jury commissioners upon which the state court based its decision. One of these commissioners testified in person and the other two submitted brief affidavits. By the state act (Gen. Acts, Ala., 1931, No. 47, p. 55), in force at the time the jury roll

in question was made up, the clerk of the jury board was required to obtain the names of all male citizens of the county over twenty-one and under sixty-five years of age, and their occupation, place of residence and place of business. (*Id.*, p. 58, sec. 11.) The qualifications of those who were to be placed on the jury roll were the same as those prescribed by the earlier statute which we have already quoted. (*Id.*, p. 59, sec. 14.) The member of the jury board, who testified orally, said that a list was made up which included the names of all male citizens of suitable age; that black residents were not excluded from this general list; that in compiling the jury roll he did not consider race or color; that no one was excluded for that reason; and that he had placed on the jury roll the names of persons possessing the qualifications under the statute. The affidavits of the other members of the board contained general statements to the same effect.

We think that this evidence failed to rebut the strong *prima facie* case which defendant had made. That showing as to the long-continued exclusion of negroes from jury service, and as to the many negroes qualified for that service, could not be met by mere generalities. If, in the presence of such testimony as defendant adduced, the mere general assertions by officials of their performance of duty were to be accepted as an adequate justification for the complete exclusion of negroes from jury service, the constitutional provision—adopted with special reference to their protection—would be but a vain and illusory requirement. The general attitude of the jury commissioner is shown by the following extract from his testimony: "I do not know of any negro in Morgan County over twenty-one and under sixty-five who is generally reputed to be honest and intelligent and who is esteemed in the community for his integrity, good character and sound judgment, who is not an habitual drunkard, who isn't afflicted with a permanent disease or physical weakness which would render him unfit to discharge the duties of a juror, and who can read English, and who has never been convicted of a crime involving moral turpitude". In the light of the testimony given by defendant's witnesses, we find it impossible to accept such a sweeping characterization of the lack of qualifications of negroes in Morgan County. It is so sweeping, and so contrary to the evidence as to the many qualified negroes, that it destroys the intended effect of the commissioner's testimony.

In *Neal* v. *Delaware, supra,* decided over fifty years ago, this Court observed that it was a "violent presumption", in which the state court had there indulged, that the uniform exclusion of negroes from juries, during a period of many years, was solely because, in the judgment of the officers, charged with the selection of grand and petit jurors, fairly exercised, "the black race in Delaware were utterly disqualified by want of intelligence, experience, or moral integrity, to sit on juries". Such a presumption at the present time would be no less violent with respect to the exclusion of the negroes of Morgan County. And, upon the proof contained in the record now before us, a conclusion that their continuous and total exclusion from juries was because there were none possessing the requisite qualifications, cannot be sustained.

We are concerned only with the federal question which we have discussed, and in view of the denial of the federal right suitably asserted, the judgment must be reversed and the cause remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

Mr. Justice McReynolds did not hear the argument and took no part in the consideration and decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.